House of Commons
CANADA

Standing Committee on Environment and Sustainable Development

ENVI • NUMBER 026 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Monday, November 20, 2006

Chair

Mr. Bob Mills

Standing Committee on Environment and Sustainable Development

Monday, November 20, 2006

● (1535)

[*English*]

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

I would like to get one piece of business out of the way, just at the beginning of the meeting. That's our budget request for payment for witnesses for Bill C-288 in the sum of $14,400. I think everybody has a copy of that item.

Are there any comments? Yes, Mr. Warawa.

Mr. Mark Warawa (Langley, CPC): First of all, do we need a mover to discuss this?

The Chair: Sure.

Mr. Godfrey moves.

Mr. Mark Warawa: I'd like to speak to it.

The Chair: Okay.

Mr. Mark Warawa: Mr. Chair, I'll be supporting the motion, but begrudgingly.

Bill C-288, as we've heard from the witnesses to this point, would have been relevant in 1998. We've heard to this point that we cannot meet our Kyoto targets, and I expect the science will support that. So Bill C-288, supported by the Liberals and the Bloc, is an irrelevant bill, and for us to be asking for witnesses to support an irrelevant bill, Mr. Chair, is a waste of taxpayers' dollars.

On the other hand, this is before the committee, and we have a list of witnesses, so under that spirt I will be supporting it—but begrudgingly.

The Chair: Are there any other comments?

Mr. Bigras, do you have a comment?

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Yes I do.

I find the comments of the Parliamentary Secretary are unacceptable, who is apparently unhappy that we are studying this bill. This flies in the face of the basic principles of our democracy.

We would never refuse supplementary estimates to study a government bill that passed on second reading. It is normal for the parliamentary committee to study a bill that was passed on second reading; in fact, it is required to do so.

The Parliamentary Secretary can be against the bill, but this shouldn't be a factor. What is important is that the bill is studied because this is what the majority of MPs, Canadians and Quebecers want. Therefore, I would like to proceed with the vote on the supplementary estimates.

[*English*]

The Chair: Ms. Savoie.

[*Translation*]

Ms. Denise Savoie (Victoria, NDP): Thank you, Mr. Chairman.

I would like to add that this not only represents the views of the majority, but also our international commitments. That is why it is very important that we study the issue in depth.

[*English*]

The Chair: Are there any other comments?

(Motion agreed to on division) [See *Minutes of Proceedings*]

The Chair: I'd like to welcome our guests, as is our practice. I think most of you are here. Certainly those from health and environment are here. We invite you to intervene where necessary and respond to our panellists.

If we could start, we'll try to go ten minutes per witness and then open it up to our members to ask questions.

We'll begin with Ms. Coombs.

Ms. Shannon Coombs (President, Canadian Consumer Specialty Products Association): Good afternoon, Mr. Chair and members of Parliament. It's a pleasure to be here today to continue discussions on the CEPA review, and in particular how substances are regulated and managed under this important piece of legislation. We appreciate the opportunity to make a presentation.

First I'd like to introduce our association. The Canadian Consumer Specialty Products Association is a national trade association that represents 40 member companies across Canada, collectively a $20 billion industry employing 12,000 in over 100 facilities across the country. Our companies manufacture, process, package, and distribute consumer and institutional specialty products such as soaps and detergents, pest control products, aerosols, hard surface disinfectants, deodorizers, and automotive chemicals. CEPA governs all the ingredients in our products.

For a visual of our products, I have provided a one-pager, "Imagine life without you", which was passed around by the clerk. I'm sure that most of you have recognized some of the products that are used in your homes.

CCSPA has provided committee members with a brief on today's topic. The questions on the committee's topic list posted on the web for this discussion included the following: What information should the government require of industry and who should assess that information? What level of public disclosure should there be regarding data and its analysis? Where should the burden of proof lie?

In my presentation today I will outline the current processes and our comments on the law and regulations.

First, I wish to clarify that the terms “new” and “existing” that I'll use during this presentation are those used by companies, officials, and involved stakeholders when discussing the regulations and the legislation of CEPA.

To address the first question—how are substances assessed under CEPA and what information is required—I'd like to start with new substances of CEPA.

The new substance notification regulations are regulations that govern how new substances are assessed and approved under CEPA. The regulations have been in place since 1994 but are retroactive and reach back to 1987 to assess new substances. These regulations require that a company or individual proposing to bring a new substance into the Canadian marketplace must provide an information and data package for government assessment to Health Canada and to Environment Canada. The regulations are very clear about what information must be provided so that Environment Canada and Health Canada assessors can make a proper determination. Both departments review the information and data and determine if there are any potential environmental and/or human health concerns.

It is CCSPA's position that these regulations are science-based, rigorous, predictable, and progressive—by “progressive” we mean they're based on volume. What this means is that the higher the volume of a substance manufactured or imported into Canada, the more data a company must provide to the government.

The initial submission determines the potential impacts on human health, safety, and the impacts on the environment. Then there are triggers in place for additional data to be generated and submitted, based on the volume, to ensure that there are no impacts on human health and safety for the environment. Information and data requirements are quite rigorous and are clearly spelled out in the regulations.

Examples of the information and data that's required to be submitted are such things as the annual quantity that will be used in Canada, the uses, including those in end-use products, and whether the substance may be in products intended to be used by or for children. Minimum test data includes water solubility, impurities, biodegradation test data, skin irritation, toxicity to fish, algae, mammalian testing, as well as mutagenicity data. There are 12 schedules of information under the regulations that are required to be submitted to the government, based on the volume.

Canada's new substance notification regulations are as stringent and as robust as any OECD country's new chemical program. I would suggest that if the committee would like to have more discussion on the 12 schedules, you might wish to have Environment Canada or Health Canada outline those provisions.

I would like to note that these regulations have been developed in consultation with stakeholders, and were revised in 2005 after consensus recommendations were made on the regulations and guidelines.

For existing substances, government has recently finished the first phase of the categorization and screening of the domestic substances list—that is, categorization. Canada is the first country in the world to comprehensively review its existing substances, and it's leading the world. This process took six years to complete.

Environment Canada and Health Canada led a process to categorize 23,000 substances on the domestic substances list, the DSL. That program was science-based and was consultative throughout the timeline. As a reminder, the domestic substances list is comprised of many substances, such as gas, building blocks for plastics, food, pharmaceuticals, ingredients for paint, vitamins, fragrances, flavourings—it's quite a range.

● (1540)

The categorization process follows science-based criteria for substances to meet. Those are: persistent and inherently toxic; bioaccumulative and inherently toxic; persistent bioaccumlative and inherently toxic; or the greatest potential for human exposure.

In a prior brief to the committee in June of this year, we stated that the CSDSL program was a success of CEPA. We also included in that brief the success of the new substance notifications applying to the substances in Food and Drugs Act products over the past five years, which again, in our opinion, is most beneficial, since those regulations are science-based, predictable, and rigorous.

It is CCSPA's understanding that as a result of this program of categorization and screening, Canada has identified approximately 4,000 substances as having met the categorization criteria and possibly requiring further in-depth study and assessment by the government. While the results of the programs have yet to be made public with an action plan from Ministers Ambrose and Clement, CCSPA has challenged this committee and the government that the list of potentially 4,000 substances needs to be put in context and communicated properly to Canadians.

As discussed in September, previous witnesses have been quoted in our national newspapers characterizing the list as the baddies of the bad or the worst of the worst. We are told the substances on the list will include such things as tamoxifen , which is a life-saving cancer drug; titanium dioxide , a key ingredient in sunscreen, which prevents cancers; vinegar; almond flavouring; and vitamin A—just to name a few. Instead of scaring Canadians and not advising them of the facts, we should be telling them about the enormous work this government has undertaken and its plans to address concerns with all stakeholders, but most importantly, we should put into context what this list really means to Canadians.

The example of tamoxifen is excellent, because of course that substance meets the criteria because it's designed to kill. We assume that the intent is to keep that substance available to consumers. Therefore, it is critical that these results have some risk-benefit communications.

As per the September 26 submission and presentation to the committee, we are again requesting the government to develop a proactive communication strategy to inform Canadians about the program and the results, so that they're informed and can make balanced decisions. It is also our expectation that the second phase of CSDSL screening will have the two departments conducting both rapid and in-depth screening risk assessments.

Information for that second phase of the CSDSL program will be assessing existing substances similar to how new substances are assessed. The major difference there is going to be between the CSDSL program and the new substance program is the possible, as we call them, data gaps. The term data gap is used when some tests have been conducted on a substance, but other tests may not appear to have been conducted. If the government has identified a data gap for a substance, it does not automatically mean that no test exists; companies may have conducted assessments on these substances to ensure human and environmental safety as part of industry's commitment to providing safe and effective products to consumers.

Government will be identifying data gaps, as they may prevent their making informed decisions on the assessment of a substance. Government will undoubtedly be challenging industry to close the data gap and provide the information necessary for the government to reach an assessment conclusion. CCSPA members are providing and are willing to proactively provide these data to fill the gaps, as long as the process for screening and moving forward is science-based and there is due process for comments prior to any public decisions being made.

Government will also likely be using publicly available data and data submitted by companies to make their assessment. Canada will also be using results of studies and substance assessments carried out by other OECD jurisdictions, such as Europe, the U.S., and Japan.

Industry is also involved in other programs to ensure data gaps are filled. For example, the OECD and U.S. high-production-volume challenge programs are producing information sets that are being reviewed by various regulators around the world. These regulatory reviews will be used in Canada, no doubt.

Overall, CCSPA is confident that the second phase of the categorization of screening program will operate efficiently under CEPA.

To answer the question of how much information should be publicly disclosed, it is our opinion that CEPA provides the minister with broad authority to determine what information companies consider to be confidential and the authority to disclose confidential information if the minister deems it to be in the public's interest. I will be speaking to CEPA part 11, sections 313 through 321, which deal with the disclosure of information.

Section 313 allows individuals and companies to request that information they submit to the government be treated as confidential. However, there are many instances where the government, under CEPA, requires companies to submit confidential information concerning the substances they use.

● (1545)

Section 315 of CEPA provides the minister with the extraordinary power to disclose confidential business information that is made available to them, if in the minister's opinion the disclosure of such information is clearly in the public's best interest and outweighs any material or financial loss or competitive position of a company or person who provided that information. Section 316 also allows the minister to disclose confidential information to a physical or medical professional.

Section 319 of the act allows the minister to create regulations for what information must accompany a request of confidentiality. In essence, the minister can set the rules concerning circumstances under which they may consider information submitted to them to be confidential.

To answer the final question on who bears the burden of proof, first and foremost our members' first priority is the health and safety of Canadians and their environment. While industry takes upon itself the responsibility for bringing new technology to Canada, we also determine the proper use and application of substances. Before a substance is brought to market, industry conducts numerous in-house tests and risk assessments to ensure that substances in our products can be used safely and that human health and the environment will not be compromised. Industry also determines how the substance should be used so that risks are mitigated. This is accomplished via handling instructions, precautions on the label, and disposal information. Industry takes its obligation towards the proper and sound management of substances very seriously.

However, it is the government that sets the parameters of what it takes to have the government approve a new substance or continue with the substances on the DSL. It is the government that sets the parameters for the regulations, determines the scientific criteria, and makes the final decision on whether that substance is allowed to be manufactured or imported into Canada. Therefore, it is our opinion that both industry and government have a role to play to ensure that the appropriate assessment of substances is conducted.

Mr. Chair and members of Parliament, CCSPA and our member companies stand by the position that the ingredients are used safely in our products, and our products are safe when used according to directions.

Thank you for your time. I'd be pleased to answer any questions.

The Chair: Thank you.

Ms. Ginsburg, please go ahead.

Ms. Jessica Ginsburg (Counsel, Canadian Environmental Law Association): Good afternoon.

My name is Jessica Ginsburg. I am special projects counsel at the Canadian Environmental Law Association, also known as CELA.

I'd like to introduce Kapil Khatter, director of the Pollution Watch program on health and environment, which is a joint initiative of CELA and Environmental Defence. Also sitting with me today is Fe de Leon, a researcher at CELA.

I'll now turn to burden of proof. The issue of burden of proof is extremely important from a number of perspectives, historically, economically, and scientifically.

Historically, approximately 23,000 substances were allowed to enter the Canadian market without any toxicological information or assessment. These substances, now known as “existing substances”, may exhibit any number of hazardous properties. The burden was placed on government to try to identify priority substances requiring assessment, first through the creation of two priority substances lists in 1989 and 1995, and more recently through the categorization exercise.

Identifying and assessing substances using the two priority substances lists proved to be extremely inefficient, expensive, and ultimately ineffectual. Only 69 substances in groups received assessments, and regulatory actions have still not been taken to prohibit or eliminate these substances.

The categorization exercise has attempted to prioritize the remaining backlog of existing substances, but this initiative has been similarly hampered by the scarcity of available information and the lack of onus on industry to provide the missing data.

In July 2006 Environment Canada released figures indicating there were over a thousand substances considered not to have met the categorization criteria simply due to the fact that the department lacked sufficient information on which to base its decisions. At no time during the categorization exercise did government require industry to fill in these data gaps by conducting toxicological testing, despite repeated recommendations to this effect from NGO participants.

The failure to gather data on these substances so as to deal with them in a scientifically valid way runs counter to the precautionary principle. The precautionary principle is a CEPA guiding principle, and government is obliged to exercise its duties in a precautionary manner where possible.

The next phase of work will require government to conduct screening assessments on approximately 4,000 substances that are expected to meet the categorization criteria. If the government continues to bear the burden for investigating the toxicity of these substances, this screening process is anticipated to extend over a period of decades.

Again, it is important to note that these substances are already in Canadian commerce; therefore, our citizens and our environment will continue to be exposed to them over this prolonged period of time. It is important that the act be amended to place greater responsibility on industry for its substances in order that prompt action can be taken on the most threatening ones.

In considering how to amend CEPA, special attention should be paid to paragraph 71(1)(c). Under this section, government can require a proponent of a substance to conduct toxicological tests. However, government authority is curtailed by the requirement in section 72 that the minister must first have a reason to suspect the substance is toxic or capable of becoming toxic. There is a lack of clarity regarding the threshold for suspicion of toxicity and the degree of certainty that is required in order to meet it.

The new substances regime places a greater onus on industry to produce information. Notifiers are required to prepare and submit small data sets before chemicals can be newly introduced into the Canadian market. As with existing substances, however, the ministers may only request additional toxicological tests under section 74 when they suspect a substance is toxic or capable of becoming toxic.

The final report of the multi-stakeholder consultations on the new substances notification regulations identified a number of concerns and confusion around section 84 and said the ultimate goal would be to amend CEPA to incorporate information-gathering authorities.

I'll now turn to our recommendations.

Number one: The ministers' power to require industry to conduct toxicological testing and submit the results under paragraphs 71(1)(c) and 84(1)(c) should be unconstrained by the prerequisite that the ministers suspect a substance is toxic. Such a prerequisite weakens the ministers' ability to shift the burden of proof onto the proponent of a substance.

● (1550)

Number two: At all phases of the information-gathering and assessment process, reverse onus should apply. Accordingly, it should be industry's responsibility to demonstrate the safety of their substances. Examples of this approach can be found in the authorization process under REACH, and in portions of the revised registration regime of the Pest Control Products Act. There should also be a specified time limitation to ensure that industry provides this information promptly upon request.

Number three: In order to achieve this objective, the following sections of CEPA will require amendment: section 73, dealing with the categorization of substances; section 74, dealing with screening assessments; section 75, dealing with substances that have been controlled by other jurisdictions; and section 76, dealing with full assessment for priority substances.

Number four: Precaution should be exercised in the absence of data, and uncertain substances should not be allowed on the market, since industry has not discharged its obligation of demonstrating safety.

Moving on now to confidentiality, the issue of confidentiality has far-ranging implications for transparency, precautionary action, and the public's right to know about substances that may have an impact on their health and their environment. The public's right to know must take precedence over industry claims that competitiveness requires confidentiality. Sections 313 to 321 of CEPA set out the general requirements for claiming confidentiality. They hold that a person who provides information to the minister under this act may request in writing that the information be kept confidential. Section 314 specifies that the minister will not disclose the information unless a legal test is met, as set out in sections 315 to 317. The guidelines for the notification and testing of new substances provide additional details. Under the guidelines, notifiers may claim confidentiality as long as they satisfy six general criteria and sign a certification statement attesting to the accuracy of their claim.

Little information has been reported about whether and how the confidentiality provisions have been applied. Confidentiality requests are not dealt with in a consistent manner across government departments. For instance, the certification statement is not uniformly applied, and at times the six criteria to be met by notifiers are listed without an “and” separating them, causing confusion about whether one or all of the criteria must be met. In some departments all information received from a notifier is treated as confidential unless the company provides explicit written consent for the government to disclose it.

Additionally, confidentiality is maintained between government agencies that have not signed information-sharing agreements, so it's possible that notification packages may not be shared where the same substance is notified to different agencies under two or more acts. As a result, public access to information is jeopardized and consistency in government decision-making is challenged.

I'll turn now to recommendations.

Number one: The committee should call and review evidence on the actual use of confidentiality under CEPA in order to determine how and to what extent the provisions have been used in the interest of public health, public safety, and the protection of the environment.

Number two: According to Canada's international commitments, CEPA provisions should ensure that information on chemicals relating to the health and safety of humans and the environment is not regarded as confidential.

Number three: CEPA should contain legally binding requirements to be met by a notifier in order to claim confidentiality. There should be a presumption that confidentiality will not be granted unless certain conditions are met, rather than the opposite presumption, which currently exists.

Number four: Notifiers should always be required to provide evidence substantiating their claims of confidentiality.

Number five: Summaries of all notification packages with confidentiality claims should be made public prior to the final assessment decisions.

Number six: Where confidentiality is claimed, the company's chief executive officer should be required to attest to the fact that the confidentiality criteria have been met. Currently, only the individuals submitting the notification package are required to sign the certification statement.

Finally, number seven: Confidential information should be shared freely among all government departments involved in the assessment of substances. Formally negotiated information-sharing agreements should not be required between government departments that are involved in reviewing notification packages.

Thank you for taking the time to hear from me today.

● (1555)

The Chair: Thank you very much.

We'd like to welcome Mr. Larson. Just for members' information, he has filled infor Mr. Graham, the vice-president, who was unable to attend. So we have the president, Mr. Larson, here in his place.

Thank you.

Mr. Roger Larson (President, Canadian Fertilizer Institute): Thank you very much, Mr. Chairman and members of the committee. I apologize for our last-minute substitution. Getting the president rather than the vice-president may be a step down in the world.

I would like to take a moment to talk with the committee about our views on the science assessment and focus on the use of the science assessment as a basis for the toxics determination under CEPA.

My industry has been involved in this issue since the mid-1990s with a priority substances list proposal, a PSL, to evaluate road salt and ammonia in the aquatic environment as CEPA-toxic. So our experience on this is very real and very directly affected our industry, which manufactures plant nutrients for use by farmers to grow food.

The proposal for ammonia in the aquatic environment hinged on a problem that we have with municipal waste water treatment plant effluent. The challenge with road salt was a concern that municipalities were exceeding the necessary requirements for public safety. And when they decided to define the package for road salt, they included three chloride-based products: sodium chloride, which is of course salt; potassium chloride, which is potash, which is a fertilizer; and another one. Now, the reason that there was an inclusion of potassium chloride was simply because it was a residual product, you might say an impurity when the refining of the salt process was completed. Nevertheless, potash was included in the proposal to declare toxicity on road salt.

The need for a science assessment probably is viewed as a process to establish federal jurisdiction in order to regulate a substance. The assessment process in the case of salt and ammonia did not add any scientific knowledge to the equation. When a science assessment is used in legislation as a measure to define constitutionality, then we end up with the difficulties of whether or not you can remove the word “toxic” from CEPA and still have legislation that is constitutional. This politicizes the science assessment and effectively destroys its validity as an effective tool for decision-making. If the only way you can establish jurisdiction is to declare something toxic, then every word in the science assessment that's going to be written down is going to be one that intends to drive the decision in that particular direction. Whether or not the assessment is meaningful in any peer-reviewed science meaning of the word effectively becomes irrelevant.

We had weak science assessments for road salt and ammonia in the aquatic environment because of the politicized process. Early on, CFI did a literature review on the ammonia issue and showed the science assessors what everybody in the world already knew: that if you put excessive quantities of ammonia in water it will kill fish. It's also a life-giving substance that is absolutely essential to make plants grow. It's an issue not of inherent toxicity but one in which a certain quantity is necessary for life and very beneficial, and too much can cause harm to certain species.

● (1600)

I would like to conclude my brief comments by suggesting that the one thing the science assessment does not do is ask what a meaningful risk management for a substance would be. Rather than focusing efforts on risk assessments or on risk management, we spend years politically fighting over what the risk assessment should say on a substance. This is a huge misallocation of public resources within the Department of the Environment. It's a huge waste of economic resources on the part of the affected industries. It is detrimental, in my view, to effective public policy development.

Mr. Chairman, thank you.

● (1605)

The Chair: Thank you very much.

We'll go to Mr. Godfrey.

Hon. John Godfrey (Don Valley West, Lib.): Thank you, Mr. Chair.

Today we're looking at these three issues: information requirements, burden of proof, and disclosure. I suppose the challenge is to try to get from the witnesses, in terms of the existing act if we look at these three issues, whether we think CEPA has been too harsh, just about right, or not strong enough. I would have some difficulty relating that question to Mr. Larson's presentation, but perhaps he can help in the question I'm now about to put.

I would read into what Ms. Coombs said that as far as these three issues are concerned, CEPA is strong enough, that the minister has the power, and that basically—if I understood correctly—she was arguing for maintenance of the status quo.

Unfortunately, Ms. Ginsburg, we didn't have all of your comments translated in either official language, so we had to listen very carefully to what you had to say. I would gather that on all three of these issues you felt we should go further. I think that would be the layman's summary of what you said in your fairly dense ten minutes.

Since we've eliminated that it has been too strong, my question is to Ms. Coombs, having heard Ms. Ginsburg give her critique on these three points of information requirement, burden of proof, and disclosure. Which of those points would you have argument with, realizing that you can't have argument with all of them because we don't have enough time? Pick your top-line criticisms, and then we'll have Ms. Ginsburg come back, or perhaps Dr. Khatter.

Ms. Shannon Coombs: Thank you, Mr. Chair, for the question.

I was intrigued by some of the comments that were provided, because while we may have summarized that, yes, we are supportive of the status quo, we are supportive of a science-based, rigorous system when it comes to the new substance notification. We're very pleased with how that process works, as it is predictable and rigorous, and we're pleased that it also works for substances in Food and Drugs Act products.

I was a little bit surprised about the comments with respect to confidentiality, and I didn't understand some of the concerns. I would put that forward as something that maybe we could further explore, since CCSPA believes the powers within CEPA provide provisions to protect confidential test data, but also to provide information to people who wish to ask for that information, and that's through the Access to Information Act. It's my understanding that if a notifier makes a submission to the department and designates everything as confidential—test information or confidential business information—there are still pieces within the submission that can be accessible through the Access to Information Act.

Hon. John Godfrey: Would that be your only criticism of what Ms. Ginsburg had to say?

She was suggesting that we need a much more proactive regime. I'm thinking, for example, of burden of proof. She was suggesting that we look more to what the Europeans are doing, and that this is the time to realign our legislation with the most forward-looking jurisdictions in the world. Do you see any difficulty with that?

Ms. Shannon Coombs: As I mentioned in my comments, our member companies do in-house testing and rigorous risk assessments prior to those substances coming into Canada. As well, with respect to the government, they set out the criteria and the parameters for how the science and the information should be compiled and submitted to them prior to any decisions being made. We think there are the provisions in place to ensure that substances that are beneficial to consumers are brought into the marketplace without harming human health and the environment.

Hon. John Godfrey: But Ms. Ginsburg was arguing that we need stronger authority to use the precautionary principle to ban or significantly reduce the most dangerous substances. In other words, in her testimony she said she felt CEPA was inadequate.

Ms. Shannon Coombs: May I clarify whether that was for new or existing substances?

Ms. Jessica Ginsburg: For both.

Hon. John Godfrey: Ms. Ginsburg.

Ms. Jessica Ginsburg: Could I respond? The comments around burden of proof were directed to both existing and new.

● (1610)

Ms. Shannon Coombs: So is your argument that industry is not providing enough data for new substances and existing substances?

Ms. Jessica Ginsburg: There are a number of areas of existing and new substances that I think could bear improvement. Certainly the onus on industry to provide data for new substances is an improvement over essentially the non-requirement that existed originally for the existing substances. There is a data set there; however, there are certainly areas where the data set could be improved, especially around chronic toxicity and children's health issues. There's room for a number of improvements.

In terms of the government's authority under those two areas, there's a reason why I know it's still an issue under the new substances regime, as well as the existing one. Approximately seven years ago I was involved in the multi-stakeholder consultations that extended to around two years and looked at revising new substances notification regulations for chemicals in polymers. One of the major issues that we dealt with was paragraph 84(1)(c), which was government's ability to augment the existing data set with additional pieces of data where they felt that data was required.

There are these core data requirements in the regulations themselves. Sometimes, based on the information to come from those core data requirements, government feels that additional tests need to be performed. However, under paragraph 84(1)(c), its authority to require those additional tests is constrained by this suspicion-of-toxicity threshold, essentially. There was a fundamental lack of understanding about what that threshold was. It's not defined. Different people within government can interpret it in different ways, but essentially it creates this unspoken pressure to already determine the substance to be toxic in order to request further information. So it's a bit of a catch-22.

We tried at that time to explore ways that the language could be clarified, perhaps through guidance manuals, but it was decided that the ultimate goal was that there needed to be some clarification in CEPA itself and in its unclear language. In fact, we feel the caveat, the suspicion-of-toxicity requirement, should just be taken out, so that when government does feel it needs additional data to make its assessment, it should have the authority to obtain it. That same language appears for both existing and new substances.

I think my colleague Kapil also had something quick to add.

Dr. Kapil Khatter (Canadian Environmental Law Association): Mr. Chair, is it okay if I take more of Mr. Godfrey's time on this?

The Chair: Sure.

Dr. Kapil Khatter: At some point I would like to be able to do the international comparison, but I'll just do the domestic comparison to the Pest Control Products Act. What we have in terms of comparing the existing substances to the new substances is that the Pest Control Products Act requires quite a bit more information, requires testing data on every substance, every pesticide on the market. I think one of the witnesses who came before the committee explained before that it's a weird thing that where companies make both chemicals that are not pesticides and chemicals that are pesticides, on the pesticide side they have to create all this data and on the other side they don't. So on the one hand, we feel the information requirements are weak particularly for existing substances, for which there are no information requirements, and for the new substances as well.

In addition to that, the new Pest Control Products Act now sets a different standard for confidentiality. It divides business confidential information from the test data related to health and the environment. You can go to the Pest Management Regulatory Agency and you can look at all that test data. It's public information now, and we believe that should be true for chemicals falling under CEPA as well.

Hon. John Godfrey: Thank you for that. I don't have much time left.

Mr. Arseneau, as you hear these suggestions, do you think the effectiveness of CEPA would be improved by what Ms. Ginsburg and Dr. Khatter are saying?

Mr. John Arseneau (Director General, Science and Risk Assessment, Science and Technology Branch, Department of the Environment): Perhaps I should explain a little bit about how that part of the act becomes operational within the new substances program. It happens whenever a risk assessor believes there is a reason for concern that isn't addressed adequately by the test information that has been received or the adequacy of our predictive models. We would then go back to a company and require different types of testing and more information to be able to make a determination.

We've always viewed that piece of the legislation not so much as an invitation to conduct ongoing research as much as to address a particular concern that we are becoming aware of, usually because of emerging science such as areas like perfluorinated compounds, which only became of concern recently because of information coming to us. We've gone out and asked for more information in that context.

So that's how we tend to apply it. And if we were to apply that in a broader context, I'm not sure we would know exactly what to ask for that would help us make a determination.

● (1615)

The Chair: Mr. Larson, our time us up. Very briefly, you wanted to get in.

Mr. Roger Larson: Thanks.

I want to attempt to address Mr. Godfrey's questions. I think that CEPA is much less effective than it could be because it causes a misdirection of resources. As I mentioned, it doesn't ask what meaningful risk management would be. It spends its time politicizing the issue. With something like a pesticide, if we understand the Latin root of the word, “icide”, which is “to kill”, obviously you're going to have a toxicity question. But many substances need to be managed that do not properly fit into that category, and resources are misspent.

Thank you.

The Chair: Mr. Lussier.

[*Translation*]

Mr. Marcel Lussier (Brossard—La Prairie, BQ): Mr. Larson, you say that we focus too much on risk assessment and not enough on risk management.

Can you explain in further detail what you mean by risk management?

[*English*]

Mr. Roger Larson: I'll try, yes.

Risk management, to us, is managing the impact that substances can have in their normal use in the environment and managing the potential for misuse in inappropriate areas by educating users on things like best management practices. CFI has developed a very comprehensive science-based program for certified crop advisers to advise farmers on how to manage nutrients properly, whether they're fertilizer nutrients or manure sources or other organic sources, and to ensure there is a balance between the nutrients applied in the field and the nutrients removed in the growing crop. These best management principles are much more effective at helping 240,000 farmers in Canada manage nutrients appropriately than some concept of hiring envirocops to follow along and try to tell these farmers how to operate, which we all know would be completely ineffective, and Environment Canada couldn't possibly manage the resources to do that.

So instead of spending our time on political debates as to whether or not a substance should be labelled in a particular way, we would be much more effective if we looked at what programs can be used in part of the normal economy.

I have a publication on best management practices for fertilizer I'd be pleased to share with you. And while I only speak English, it is in both English and French. I'd be very pleased to share this with you.

Thank you.

[*Translation*]

Mr. Marcel Lussier: As for the road salt study, was recommending alternatives part of your mandate?

[*English*]

Mr. Roger Larson: Yes, it was. I was not the lead organization in that issue. We worked with a number of different organizations, and of course the association of municipalities, which put forward a code of practice that they developed themselves for best management practices for salting. It's an excellent example of the kind of cooperative best management practices that can be put together between industry and users, in this case urban municipalities, with the participation of government in an appropriate way and without inappropriate and overly forceful regulation or legislation.

● (1620)

[*Translation*]

Mr. Marcel Lussier: However, didn’t all alternatives to road salt have to undergo toxicity tests before being deemed non-toxic?

[*English*]

Mr. Roger Larson: I would first suggest that road salt is not toxic either, but it can be harmful to, for example, a row of apple trees beside the roadway. It can affect certain species of grass in the ditches, and that is a negative result.

There never was an assessment done on potassium chloride, which is potash. As I mentioned, when we mine potash, it's roughly 40% sodium chloride and 60% potassium chloride. When we separate it out, there's generally a bit of potassium chloride that ends up with the salt, so if you use that salt on the roads, there's a bit of potassium chloride in it. Whether that potassium chloride presents the same kinds of issues was never assessed. There was and there is some validity in the science of asking whether this alternative is better than sodium chloride for the environment, but I think the first step is to see whether, with good management practices, we can manage sodium chloride, which is the most cost-effective way of maintaining ice-free roads. If sodium chloride is $10 a tonne and another alternative is $150 a tonne, the first thing to do is to better manage the sodium chloride before you increase people's taxes that much.

The Chair: Mr. Arseneau wants to get in a comment.

Mr. John Arseneau: Thank you very much, Mr. Chair.

I have just one point of clarification. The risk assessment treated road salts as a kind of mixture, understanding that there were different chloride compounds included in the product, and did an assessment on that whole mixture, which did of course include potassium chloride. It was a very thorough science-based assessment; it was peer-reviewed and internationally leading. The main issue it addressed was whether the amounts used were causing concentrations sufficient in the environment to have adverse effects, and it did come to a conclusion on that.

The Chair: Go ahead, Mr. Lussier.

[*Translation*]

Mr. Marcel Lussier: I would like to go back to what Ms. Coombs said.

You talked about the government’s communication strategy. I’m sorry I may have missed something. Were your comments addressed to Health Canada or Environment Canada? Since you say that we shouldn’t make people afraid to consume certain domestic and consumer substances, what kind of information do you think should be included under the communication strategy?

[*English*]

Ms. Shannon Coombs: Thank you, Mr. Chair, for the question.

The CSDSL program, as I commented in our opening remarks, is leading the world with how existing substances are being managed. It is our assertion that there needs to be a communication strategy to inform Canadians about the process the government undertook for the categorization process, the science behind that program, and the results of that program. Approximately 4,000 substances that have met the criteria in some way are going to be on that list, and that needs to be properly explained. There are going to be substances on that list that are beneficial to Canadians, substances like vitamin A and tamoxifen, if you are a cancer patient with a particular type of cancer. Titanium oxide is another example that we had. It's an ingredient in sunscreen.

What we're asking is that what's on the list be put into perspective. First you have to go back to what's on the DSL, which is a huge range of substances, as we discussed earlier in my presentation. We're looking for something that clearly articulates that the program has been science-based, articulates where we're going with respect to the results and next steps, and explains to Canadians what's on the list—because, as I mentioned, there is food, and it is both departments, to answer your first question.

● (1625)

The Chair: Mr. Glover, I believe you want to get in.

[*Translation*]

Mr. Paul Glover (Director General, Safe Environments Programme, Department of Health): I would say that these comments are addressed to both departments. We are now working together to develop an action plan and a communication plan to achieve results under the categorization process.

Mr. Marcel Lussier: Thank you.

[*English*]

The Chair: Thank you.

Ms. Savoie.

Ms. Denise Savoie: Thank you.

I guess the issues that underlie the questions that have been asked relate to the right of Canadians to a healthy environment and the right of Canadians to have their government protect their health and their environment. I was reading this weekend a major newspaper that published a whole section on the rise in cancer among Canadians. I think the statement was that two out of five Canadians can expect to have cancer, and there was a reference to that perhaps reflecting a failure in public policy.

Coming back to what we were talking about today, to CEPA, would you like to comment on that as it relates to CEPA? Has there been a tendency to protect industry at the expense of protecting citizens?

Dr. Kapil Khatter: Thanks very much for the question.

It's a difficult answer to a lot of questions around the rising rates of cancer and other diseases, in that we often don't know. That's particularly the reason why we have sessions like this, where we talk about the need for information. When we have such a large number of substances that have been grandfathered and are on the market without any data or evidence of either their safety or their harm, we simply can't answer the question as to whether those substances are part of the problem or not.

We know there's a problem. The problem is unexplained. We know there are all these chemicals we have very little information about, and we need to be able to put those two things together.

Ms. Denise Savoie: Hence, I guess your suggestion that we should err on the side of precaution and use the precautionary principle. Can you elaborate a little bit on how the precautionary principle would apply in a practical way in the reassessment of these products and the assessment of new products?

Ms. Jessica Ginsburg: Perhaps I could speak to that.

One of the most direct ways the precautionary principle could apply relates to the fact that there are hundreds of substances about which there is very little known information. I'm referring now to the existing substances, those that have been going through this categorization exercise, where government is trying to pull together whatever existing information there is about these substances and looking to see whether they pose a threat. When the information is not available on which to base a decision, the precautionary principle could kick in and determine that these substances need to be controlled, limited, prohibited, eliminated. Or alternatively, the precautionary principle could be used is to say that until information is provided to demonstrate the safety of those substances, they should not be used and risk management measures should be taken to eliminate them.

The Chair: Ms. Coombs.

Ms. Shannon Coombs: I'll try to briefly answer your question.

With respect to the cancer question you asked, I think it's important to recognize that our whole world is made up of chemicals. All the things we eat, we touch, and we breathe are chemicals, most of which are natural. For example, there are 17 carcinogens in a cup of coffee. Again, it's not the chemical, it's the dose that we need to take into consideration.

With respect to the comments that you raised, the statistics we have from the Canadian Cancer Society—

● (1630)

The Chair: Ms. Coombs, I'm afraid that people are abandoning their coffee en masse here.

Ms. Shannon Coombs: I'm sorry to cause alarm. My apologies.

The statistic we have from the Cancer Society is that the new cases of cancer are primarily due to an increasing and aging population. The 43% of new cancer cases and 60% of deaths due to cancer occur among those, really, who are 70 years of age. We need to also put that into perspective as we think about substances.

With respect to the precautionary principle, I believe the precautionary principle is embedded in the new substances notification regulations. I also believe that the precautionary principle will be embedded in the risk assessments that will be done during the categorization and screening of the domestic substances program.

The Chair: Mr. Larson.

Mr. Roger Larson: Before you can sell a fertilizer in Canada, you have to register it with the Canadian Food Inspection Agency. In order to win that registration, you have to prove not only that the product is safe, but also that it is beneficial.

The choice you gave us in your example is not always the real choice we're facing. Quite often you have something that is very beneficial and is also very good for the health of Canadians but is nevertheless a substance.

Ms. Denise Savoie: Thank you.

I have another question that relates to a comment Mr. Larson made regarding the word "toxic". I'm wondering, Ms. Ginsburg, if you could talk about that question with respect to.... I believe there's been a court challenge on that issue already. I believe he suggested that it simply politicized the issue rather than addressed anything substantive.

Can you comment?

The Chair: Mr. Khatter.

Dr. Kapil Khatter: I'll try to answer that question.

We've spoken a little bit about toxic before, in terms of.... I think the question is making reference to the Hydro-Québec case in particular, and to other cases where the question whether CEPA was constitutional in terms of its federal authority to deal with these substances hinged, partially at least, if not fully, on the criminal law idea that these substances were toxic and harmful.

What we are concerned about is that if we tamper with the list as it is and with the term "toxic", we may raise the possibility of a challenge to that constitutionality.

Ms. Denise Savoie: I guess this is my last question.

The Chair: Yes.

Ms. Denise Savoie: Canada seems to be thought of by various groups as having weaker laws with respect to products than, for example, some OECD countries. Would you agree with that, or would you comment on it?

I have read that the David Suzuki Foundation has commented, on the food we eat, that Canada seems to have one of the weakest regulations around some of these substances.

The Chair: Ms. Coombs.

Ms. Shannon Coombs: No, we wouldn't agree with that statement. As we mention in our brief, the new substances notification regulations provide a science-based, predictable, rigorous system for new substances being introduced into Canada.

With respect to existing substances, the categorization process is leading the world in how existing substances are being assessed and managed.

The Chair: Mr. Khatter.

Dr. Kapil Khatter: What we need to remember in terms of timelines is that the new European legislation, REACH, is not just coming but is basically here. The vote is on December 12. Everyone anticipates that it will be passed and that implementation will start in the new year.

What it will mean is that for the highest-volume substances, within three years we'll have data sets for all of them. By the time the CEPA review is finished and we have this revision to CEPA, if we haven't kept up in terms of requiring data sets for existing substances and for following the lead of Europe, the largest chemicals market, in terms of the transparency of health and safety data we're going to be a couple of steps behind. So although it's true that at the moment our new substances notification program is a world leader, we will quickly fall behind if we do not continue to progress.

● (1635)

The Chair: Mr. Larson, did you have a comment?

Mr. Roger Larson: I would argue that we have the highest standards in the world for the registration of our products. I think that is one of the reasons we find it so troublesome to be debating the attachment of labels to our products.

I would just like to note for Mr. Arseneau's benefit, because he knows I want to get the last word in, that they never did assess potassium chloride. They know they didn't assess it. If it was such a very high-standard, peer-reviewed, internationally renowned study, I'd like to see the data that shows that potassium chloride should be treated the same way as sodium chloride—

The Chair: Mr. Arseneau, I believe you have a challenge.

Mr. Roger Larson: —because it almost cost us a half-million-tonne market in Japan.

The Chair: Mr. Arseneau.

Mr. John Arseneau: Thank you, Mr. Chairman.

My point was that it was assessed as a mixture. We didn't do sodium chloride or potassium chloride as unique constituents of that mixture, but we assessed the mixture of road salts themselves, of which potassium chloride is a small part.

The Chair: Thank you for that clarification.

Mr. Warawa.

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

I'll be sharing my ten minutes with Mr. Harvey.

I would like to focus on the burden of proof, but I would first like to start off by addressing some of the comments that were made by the witnesses.

Thank you for being here today.

This is relevant, in that Bill C-30, the Clean Air Act, proposes amendments to support third party auditing of information before submission, thereby enhancing the authority for the Minister of the Environment to utilize this information for the purpose of maintaining a national pollutant release inventory, NPRI, with a reliable baseline level of information on releases of substances.

It also proposes to extend the current authorities under section 71 of CEPA 1999 to the Minister of Health in order to improve the efficiency of using these authorities. These authorities allow for the collection of information and the requirement to conduct tests in order to determine if a substance is toxic or capable of becoming toxic. I think that's very good news.

I have a question regarding the burden of proof. I would like to hear some discussion, and I'd ask you to keep your answers short.

Regarding the burden of proof, which is more effective, industry or the government? Where should the burden of proof lie? Which is the more cautious? What are the pros and cons of each method? Could you comment on that?

Ms. Coombs said she believes it's a shared responsibility between industry and the government. I believe Ms. Ginsburg said industry should be responsible and should demonstrate the safety of the substance first.

Could all the witnesses provide comments on the pros and cons of both? What are your recommendations?

Ms. Shannon Coombs: Thank you.

As I stated in our opening remarks, first and foremost, our number one priority is the health and safety of Canadians in their environment.

Our member companies provide products that are beneficial to consumers: soaps, detergents, ant traps, as well as disinfectants to clean table tops. These are the types of products our members provide that are beneficial to consumers. Our industry is constantly trying to find innovative ways to bring technology to Canada.

We also want to make sure the ingredients in those products are safe and are not harmful to the environment. Our member companies conduct numerous in-house tests and assessments to ensure that the substances in those products can be used safely and that human health and the environment are not compromised.

But in order to bring that technology to Canada, we have to meet the rigours of the system that's in place. The government sets the tone for the regulations to be met, the science we have to provide, and the information we have to provide. They make the final determination. Hence, it's the reason why our submission is that we believe it's a joint responsibility. At the end of the day, the government makes the final decision with respect to bringing these substances into Canada. They also have a say in how existing substances are put on the DSL. There's still a level of protection where the government will say no, that substance needs to be taken off the DSL because of reason X, Y, or Z.

The Chair: Ms. Ginsburg.

● (1640)

Ms. Jessica Ginsburg: Thank you.

In order to speak to the pros and cons, I think we only have to look at what the historical situation has been and the direction in which other countries, such as the European countries, are moving.

Through the priority substance list exercise, we've seen that it is very nearly unworkable for government to continue carrying as much of the burden as it has. It's incredibly slow and it's very expensive.

Industry works with these substances, it knows the substances, and it is able to provide this information when required to. It sometimes means going out to investigate further and conduct further tests. But as long as government continues to bear this burden, there's actually a disincentive for industry to get to know its own substances better. As Ms. Coombs said, if they have that kind of information at their disposal, it will not be a heavy onus on them to simply provide it to government.

Government will always and should always play a role in terms of regulating these substances. I think it would be problematic to remove government from the equation all together. But in terms of providing the information, again, it is industry that benefits financially. It's currently the taxpayers of this country who are paying for a lot of this assessment, and there's no direct financial gain for them.

Mr. Mark Warawa: I'm sorry to cut you off. I'm sharing my time, and there's only five minutes left, so thank you for your comments.

[*Translation*]

Mr. Luc Harvey (Louis-Hébert, CPC): Thank you for being here today.

As my colleague Mark said, the Canadian Environmental Protection Act is a key piece of legislation for us. I was pleased to have the support of the NDP a few weeks ago so we could continue work on the CEPA. Were it not for our Liberal and Bloc colleagues, we may have not been able to review the CEPA for good year yet. So, I am happy that we are able to move ahead on this file.

We have talked a lot about road salt used for road maintenance. I think back to nearly two years ago, when a family in Quebec was crushed under a truck on a road running along a river. Because of this river, we couldn’t use calcium. As a result, the car that was travelling smoothly on a wet road, suddenly found itself on an icy road.

Our goal today is also to find a balance that allows us to use a chemical in a way that helps us without harming life. It is sometimes hard to strike this balance. That is why you are here today.

Mr. Larson, you said earlier that our actions or policies were perhaps too politicized. I would like you to provide more detail on this, because as a new MP, I am trying to play politics as little as possible. We are here to represent the citizens, move things ahead and achieve concrete results.

Mr. Larson.

[*English*]

Mr. Roger Larson: Certainly I will try.

When you take a word like “toxic”, it has a tremendous emotional impact on consumers, on the general public, on legislators, on courts, and on customers, and you make it the end goal of a science assessment. Then the entire debate will be around proving whether that substance is toxic or not.

Now, I'm not a linguist or a lawyer, but “toxic” has a meaning in the ordinary sense of the word that just about every citizen will have in their mind when they hear the word: “It's poison. Don't touch this. It's bad. Ban it.” And there are many substances, salt being one of them, ammonia another, that are absolutely essential for life, yet they have externalities; there are situations where they need to be managed. And the application of salt to roads for de-icing is one in which I think most reasonable people would say yes, we need to come up with some management protocols so we can balance the benefits with the potential negative outcomes, come up with the optimal solution. That's what we call a risk management situation, where everyone sits down and they do the best they can to define what appropriate risk management is. They use science to guide them, and they use practicality. They use the real-life issues of whether you're going to use a $10 product or a $100 substitute, and what the cost-benefit ratio is.

But all of the meaningful discussions around mismanagement get taken away because we spent five years debating whether or not you could call salt toxic. It just amazes me that we would spend so much political effort.

Now, many lawyers said you have to do this because of the constitutional question as to who has jurisdiction. If you don't label it “toxic”, then there may not be federal jurisdiction. The unfortunate outcome of the jurisdictional debate as to what was required for jurisdiction meant.... For example, in my own industry, which is an export industry, we export 75% of our production. In the case of potash, we export 95% of it. We almost lost one of our largest offshore markets, Japan, because the Japanese government took a look at our exports of potash and they said “Your government is declaring potassium chloride toxic; therefore, we can't use this substance in our holistic organic food production system”, and we almost lost that market.

These are the consequences of trying to stick an inappropriate label on products, on substances, and this is where the situation ends up when we don't focus on risk management.

I'm sorry, that was very long-winded.

● (1645)

The Chair: Thank you, Mr. Harvey.

I'd like the committee's permission for Mr. Godfrey to take over as chair, as I need to leave early, and then we'll go to Mr. Wilson. Any problems? Okay.

Mr. Blair Wilson (West Vancouver—Sunshine Coast—Sea to Sky Country): Thank you, Mr. Chair, and thank you, witnesses, for your testimony.

Listening to what you had to say, I think we can all agree that the government has a role to play and has a large obligation through the Canadian Environmental Protection Act to ensure that Canadians and their environment are properly protected from the harmful effects of toxic substances.

We have discussed the three main topics of information requirement, disclosure, and burden of proof.

The first question I have is to the directors general of the Department of Health and the Department of the Environment. It's my understanding that through the domestic substance list some 23,000 substances have been analyzed over the last seven years. Is that correct? And what has the cost been to the federal government to analyze those 23,000 substances?

Mr. John Arseneau: I'm afraid we don't have exact figures here today, but the kinds of resources that we've applied in my program to conduct that research have included a team of about a dozen individuals and also the development, in conjunction with Canadian academia and industry, of computer analysis tools. I would have to do a rough calculation on the overall cost of that.

Mr. Blair Wilson: I'd like just a rough estimate, a ballpark over seven years.

Mr. John Arseneau: I can get back to you on that very quickly.

Mr. Blair Wilson: What about for the Department of the Environment?

Mr. Paul Glover: That was for the Department of Health? The answer is ditto.

Mr. Blair Wilson: Suffice it to say that it's probably a fairly high number if you take it over seven years and 23,000 substances. If you could get back to me on that, I would be very much interested.

I have a follow-up question. There are 4,000 substances now to be analyzed, and the departments, working together, are going to be analyzing that. What's your estimate of what the cost is going to be to the federal government to analyze those 4,000 substances?

● (1650)

Mr. Paul Glover: That is a matter we are still discussing with the ministers at this point in time, as they consider how to respond to that. So it's still an item that is up for some debate internally between the department and the minister's office, about what the appropriate response is as they come forward with their plan.

Mr. Blair Wilson: I'm not speaking for industry, but I'm sure that industry in Canada is happy that the federal government has taken it upon themselves to assume this role and responsibility to keep Canadians safe, and that through the taxes the corporations pay to the government they will safeguard Canadians and do the due diligence and review of the substances.

The question I always have is If we talk about burden of proof and about responsibility and about who's going to start paying for the future review of these substances, what's industry's viewpoint on that?

Ms. Shannon Coombs: Industry has been actively involved for the past six years, so there's been a cost not just to the government to undertake this initiative. There's also a cost to our member companies and other industry associations and their member companies as well, because we want to make sure that we have the appropriate people at the table and the appropriate scientists at the table, and that all of our members are engaged, because there has been an effort by all of our member companies and other association member companies to actively participate in that. There's a cost attached to ensuring that you're proactive in providing the right information at the right time to the departments. We see the future as being the same way. As we move forward, there will also be a cost incurred by our companies to move forward and to proactively provide this information as well.

Mr. Blair Wilson: What would the effect be on industry if the burden of proof shifted, and if prior to any substances being put out into the communities, industry would have to prove that the substances they were releasing were safe? If the burden of proof shifted, would we be talking about a significant economic cost?

Ms. Shannon Coombs: It's an interesting argument, because I think we already have this reverse onus. Industry has to provide an information set, a data set, to the government to be reviewed. We are providing that data and that information and the test to support substances being new to the market and also being continued in the market. So I think the burden of proof is on us to provide that, and then ultimately the decision is made by the government to say "Yes, that data does meet the requirements, and yes, we will allow that substance in," or "Yes, we will continue to allow that substance."

Mr. Blair Wilson: Ms. Ginsburg, do you have a comment?

The Acting Chair (Hon. John Godfrey): I was thinking Dr. Khatter might. Which one of you two wanted to respond?

Dr. Kapil Khatter: I think we'd be very happy to have the idea that the burden of proof is on industry established in CEPA. I think the reality right now for existing substances is that it's not. And it really is a reasonable person test. I think if the Canadian public, when they bought a product, could ask the manufacturer whether the product, including all the substances and chemicals in it, was safe enough for them if they used it as directed, they would expect the answer to be yes. When it comes to existing substances, for which there is no data and for which no data has been submitted to the government, the answer is simply, "We don't know". I don't think the Canadian public expects the government to be chasing after each and every product and chemical and policing this while those that are putting these substances and chemicals on the market aren't taking the responsibility for ensuring that what they are putting into the market is safe enough for use.

The Acting Chair (Hon. John Godfrey): Thank you, Dr. Khatter.

Mr. Vellacott.

Mr. Maurice Vellacott (Saskatoon—Wanuskewin, CPC): There already were a couple of questions on the issue of confidentiality. I guess maybe our department people can respond on this as well. But apparently mask names may be used to hide some of that confidential information regarding a substance, "Where the publication...of the explicit chemical or biological name of a substance would result in the release of confidential business information". So I'm curious. I don't know what the sense of the industry members is in terms of that particular possibility, and whether they get faced with this sometimes. In particular, how often have those mask-name regulations been used, and for what types of compounds?

Shannon, do you want to start?

Mr. John Arseneau: She has asked me to provide a little bit of background information on the use of mask names in the context of the new substances program.

Very often when a notifier brings forward a chemical for assessment, review, and entry into the market, there is a commercial context to that entry, and therefore they request a masking of the name on the DSL.

We assess and control the chemical exactly the same as we would with any others. We have received about 3,000 of those requests over the life of the program. We've refused requests just under 500 times. For the purposes of notifying the public and consumers of that chemical of any requirement we have imposed for notification for more data if there is a change in use or if there were conditions imposed, we reveal the name of that chemical. But generally, like other OECD countries with similar programs, we allow for the commercial confidentiality if there is no adverse public interest effect.

● (1655)

Mr. Maurice Vellacott: I don't know if any others want to respond to that.

Ms. Shannon Coombs: That was a very good answer.

Mr. Maurice Vellacott: Jessica.

Ms. Jessica Ginsburg: I would just make one additional point. I was involved in the new substances notification regulations on organisms that are essentially biotechnology products. In the context of that process I tried very hard, as a concerned member of the public, to find out what the protocols were on claiming confidentiality for biotechnology products, which, as you are probably aware, are a huge concern of the public. How biotech products are dealt with is a very hot topic right now in politics.

The response I was given was that despite the fact that there are guidelines around how the department and notifiers shall deal with confidential information, the de facto operating policy of the department was to treat all of the information as confidential unless they received written consent.

I asked three different people and received three different answers. That seemed to be the consensus in the end, but from my perspective there's obviously some confusion, which is part of the reason why we feel the test to be met in order to claim confidentiality should be part of the legislative language and not just part of the guidance.

Mr. Maurice Vellacott: It's pretty widely accepted that the sharing of information obtained in other jurisdictions can help us speed up risk assessment. How is the issue of confidentiality handled with respect to the international sharing of information? Do confidentiality issues hinder the transfer of information, and how can that problem be addressed?

Mr. John Arseneau: I suppose I should try to respond to that as well. Thank you very much for the question.

Commercial confidentiality concerns do indeed have a huge impact on the useful exchange of information internationally among regulatory agencies. We try to overcome that problem by entering into confidential information exchange agreements with other jurisdictions.

For example, when REACH is finally adopted it will contain a clause that mirrors a clause in CEPA that allows for the confidential exchange of information. We also have a useful arrangement with Australia already in place. There are some difficulties with the United States because of the way the confidentiality arrangements are written into TOSC. There are some impediments there, but we've tried to overcome them through something called the four corners arrangement. It includes the chemical companies themselves waiving confidentiality requirements so they can share data with both agencies at the same time.

So we're constantly trying to do that, but there are some legal impediments there.

The Acting Chair (Hon. John Godfrey): Thank you, Mr. Arseneau.

Monsieur Lussier.

[*Translation*]

Mr. Marcel Lussier: In terms of confidentiality, I have some questions about the refusal to keep certain documents. What recourse do applicants have in this regard? Do they have a right to appeal if their confidentiality request is refused?

● (1700)

[*English*]

The Acting Chair (Hon. John Godfrey): Mr. Arseneau.

Mr. John Arseneau: Thank you very much for the question.

The acceptance or refusal of a confidentiality request is a reviewable decision on the part of the minister and the exercise of the minister's discretion. There is communication between the government and the company claiming confidentiality—an exploration of what can be released that is not necessarily commercially confidential within the guidelines we use. Then the ministers make a decision. The companies involved have a period within which they can choose to appeal that decision through the judicial system.

The Acting Chair (Hon. John Godfrey): Ms. Ginsburg.

Ms. Jessica Ginsburg: I want to reiterate what Mr. Arseneau said and highlight the fact that there is an appeal provision for companies that feel their information should have been kept confidential, but there's no comparable provision allowing appeals for the public or other interested parties who feel that information should be disclosed—at least not in the text of the act.

[*Translation*]

Mr. Marcel Lussier: I would go even further. The documents are submitted to Environment Canada and Health Canada. As a result, departments have technical information on each product. If a product is ingested, it is written somewhere that a physician may consult Environment Canada or Health Canada for information about how to treat the patient who consumed this product.

How should we proceed in these cases? Is it a rapid procedure or a procedure that takes two weeks?

Mr. Paul Glover: I am not sure of the timeframe for this part of the act. However, under this act, either department can provide the information necessary to assist an individual, such as a physician. In fact, the possibility to provide information held by either department is included in the act.

Mr. Marcel Lussier: How do you know that it is a physician calling and not a competitor?

Mr. Paul Glover: For this application of the act, physicians or groups must identify the reason why they are requesting the information. They should not request it only because thy want this information; they must be asking it for it for a patient.

Mr. Marcel Lussier: Like in an emergency?

Mr. Paul Glover: Yes.

Mr. Marcel Lussier: All right.

The Senate is currently studying a bill on the Workplace Hazardous Materials Information System (WHMIS). All confidentiality matters are being reviewed.

Are you aware of this bill?

Mr. Paul Glover: No, I am not aware of this bill.

Mr. Marcel Lussier: Let me tell you about it. Confidentiality regarding products used in the workplace was relaxed, because in the past, all businesses had to provide a whole arsenal of information and budget justifications, including some information that should not be divulged. This situation has been rectified, hence the usefulness of these meetings.

I don’t have any other questions Mr. Chairman.

[*English*]

The Acting Chair (Hon. John Godfrey): Mr. Calkins.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Mr. Chairman.

Thank you very much to our witnesses here today. We appreciate your coming.

I'm just going to follow up on what my colleague was questioning about. I don't think there was adequate time. I don't know if the panel remembers or not, but I would like to go back to the issues of confidentiality. It's very important to me that we maintain the ability of industries and corporations, or whatever, to be able to compete and to be able to keep trade secrets and those kinds of things and balance that with the public's right to know what's going on in the environment.

As far as confidentiality with respect to the international sharing of information is concerned, we talked about REACH. I don't think that's been adequately thought out or addressed yet. I just wondered if I could get your feedback on that. Do confidentiality issues hinder the transfer of information? How can this problem be addressed?

If we could just revisit those questions, I would be interested in what you have to say.

● (1705)

The Acting Chair (Hon. John Godfrey): Mr. Larson.

Mr. Roger Larson: I'm very keen on this one.

Sorry, Mr. Godfrey. The reason I didn't speak up before is my industry does not produce patented products; we produce scientifically generic products. So the confidentiality issues are pretty much in the niche of the specialty products net.

I will address your comments on REACH, if I can, very briefly. Because we have generic products, we have been working as an industry on a product testing program for the last several years, both in North America and in Europe. We believe that all the analysis and information that we have on our products will be sufficient to meet European REACH if or when that program is approved by the European Parliament.

Thank you.

The Acting Chair (Hon. John Godfrey): Ms. Coombs.

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

On your comments with respect to confidentiality, I think that in our brief we outlined what we felt were adequate provisions in CEPA. I know that the comparison was put forward with respect to the Pest Control Products Act and the differences in that. I think that information is available to people who request it; it's just a matter of how you go about it. Through the Pest Control Products Act there will be a provision where you can access that information via a reading room, if you make an application to do so. Through CEPA I believe you make a request under the Access to Information Act. The acts work in the same way; there's just a different way in how you go about getting the information.

With respect to REACH, I think that REACH and the CSDSL program are basically trying to address the same issue, and that is, building public confidence in how existing substances are managed. It's CCSPA's position that we're a decade ahead of REACH with respect to how existing substances are being managed. With a science-based program and a consultation process built into that with respect to due process for companies to respond to, we think that is the way to go. It's practical and it's workable.

The Acting Chair (Hon. John Godfrey): Ms. Ginsburg.

Ms. Jessica Ginsburg: Perhaps I could just take a few seconds for myself and then have permission to pass it to Dr. Khatter.

I just want to very quickly point out that not all pieces of legislation use the same test for maintaining confidentiality. For example, the Access to Information Act does not have a clause in section 15 of CEPA that refers to the damage to privacy, reputation, or to human dignity. A different test is used in the Access to Information Act. Also, I would point to the international trend that is moving away from confidentiality for chemical issues relating to health and safety of humans in the environment.

Perhaps I could just pass it very quickly to Dr. Khatter.

Dr. Kapil Khatter: Mr. Chairman, there is a difference between trade secrets and health and safety data. The world is moving towards recognizing that difference. CEPA does a terrible job of making health and safety data public and transparent. As REACH is coming, if we're going to be sharing information, we need to be harmonized with other jurisdictions in terms of how we deal with health and safety data. In fact, we just agreed to the strategic approach to international chemicals management agreement with 160 other countries. In there it says that health and safety data run health and it should not be considered confidential.

The Acting Chair (Hon. John Godfrey): What a glorious 12 seconds.

Thank you very much for your answers.

Mr. Blaine Calkins: You're welcome.

The Acting Chair (Hon. John Godfrey): Ms. Savoie.

[*Translation*]

Ms. Denise Savoie: Before I ask my question, I would like to go back to Mr. Harvey’s comments.

I don’t want people listening to us to think that there was a secret pact with the devil. The NDP believes that the Canada’s Clean Air Act definitely needs to be tossed and completely revised by all parties in the House.

That said, I have one or two questions.

● (1710)

[*English*]

I have a question for Ms. Coombs. I believe you mentioned that industry is already providing the information required on health, safety, and so on. Then I assume that if the onus were officially placed on industry in the act, it wouldn't be more onerous. I believe your comment was that you are already doing this.

Ms. Shannon Coombs: Yes, we're already doing it.

Ms. Denise Savoie: So placing it in the act should not be more onerous.

Ms. Shannon Coombs: I think it's implicit in the act, because it's in the regulations.

Ms. Denise Savoie: Thank you.

I have a question that perhaps Mr. Arseneau or Mr. Glover can respond to. In the burden of proof, is there anything that requires industry, or anyone, to demonstrate that the interaction of substances Canadians are exposed to is not in itself the problem—that the interaction is not the problem, rather than one individual product? Is there that kind of burden of proof?

Mr. Paul Glover: It's important to talk a bit about the risk assessment process and how it works, because at the end of the day —I'll fast forward the tape very quickly—the ministers have to convince the Governor in Council. That's the ultimate test.

Ms. Denise Savoie: Please say that again.

Mr. Paul Glover: In order to get on CEPA's schedule 1, the ministers have to convince the Governor in Council. They have to provide enough information that something meets the criteria under CEPA, paragraphs 64(a), (b), or (c): that it harms the environment, that on which life depends, or human health. At the end, this is the threshold that needs to be cleared.

If you go back to the beginning, the risk assessments that the two departments do are quite rigorous, in both our departments' opinions. They attempt to properly identify the risks and provide sound scientific advice for the ministers as they move forward. They are peer-reviewed, and they do not have an objective of let's declare everything toxic or not. They are intended to be balanced science representations, and there are processes in both departments—science advisory boards—about how these people are promoted and their performances are dealt with, based on their objectivity in this regard.

So at the end of the day we have to produce a risk assessment that deals with our understanding of the risk to the environment, human health, or that on which life depends.

We are also required to look at whether there is a potential for this substance in terms of how it releases into the environment and how it breaks down. We look at different age groups. If we feel there are obvious mixtures, we can look at those as we do them. So we take a look at the chemical, how it's used, the products it's used in, and the potential for exposure. Then based on this, we provide advice for the ministers.

The Acting Chair (Hon. John Godfrey): First, Mr. Arseneau, I want to know whether you had anything to add, because I saw both hands go up, and secondly, Ms. Ginsburg wanted to come in.

Mr. John Arseneau: I did have a slight bit to add regarding your excellent question about how synergistic effects may be assessed. This is a very new and difficult area in the science of risk assessment, because it's often hard to understand all of the context for these interactive exposures. But our more complex assessments do indeed try to come to grips with this to some degree.

A good example is the assessment we did on smog to understand what kinds of atmospheric contaminants combine to form the essential components of smog, how this happens, and what the right levels of these precursors would be to avoid risk. As well, quite often we look at what a particular substance degrades to in the environment and what the impacts of those degradation products might be. It is an extremely difficult scientific question to be able to understand all of the various components of this, but it is an area of our ongoing research.

● (1715)

The Acting Chair (Hon. John Godfrey): Ms. Ginsburg, very briefly.

Ms. Jessica Ginsburg: Thank you, Chair.

I would add that the fundamental process governing the assessment is a substance-by-substance approach, which by its nature means that cumulative effect considerations are not adequately addressed.

Ms. Denise Savoie: Again, we see the need for the precautionary principle.

Ms. Jessica Ginsburg: Absolutely.

The Acting Chair (Hon. John Godfrey): That's it.

Mr. Warawa.

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

Just speaking to the management of the substances, I get quite excited about a piece of legislation, Bill C-30, Canada's new clean air act—which is going to be discussed—and how it relates to CEPA and what we're discussing right now. It proposes to add additional flexibility in regulation-making authorities. The bill would allow regulations made under specific parts of the act to distinguish among persons, works, undertakings, or activities in order to protect the environment, human life, and health on the basis of factors such as quantities of releases, production capacity, and technology or techniques used. It proposes to extend authorities related to products that contain toxic substances, including specific air pollutants and greenhouse gases, to products that may release such substances during the course of intended use. So it's quite relevant and exciting.

Mr. Chair, I'd like to ask our department staff, has the government consistently met its deadlines on substances entering the commerce before proper assessment or without proper assessment? Have we met those deadlines?

Mr. John Arseneau: Yes, Mr. Chair, I can confirm that we have.

Mr. Mark Warawa: That's good news.

The last priority substance list was published in 1995, I believe. Is there a plan for a third priority substance list?

Mr. Paul Glover: At this point in time, both ministers are looking at the results of the categorization exercise and have announced their intention to come forward with a plan to deal with those results. At this point in time, that's advice to the ministers.

Mr. Mark Warawa: Okay. Thank you for the brief answers. It gives me the opportunity to ask Mrs. Ginsburg about the missing data.

You were talking about that in your presentation. Could you elaborate on that? And Ms. Coombs would likely want to make comments on it too, the missing data and substances not being managed properly because of that.

Ms. Jessica Ginsburg: Absolutely. There is a problem of missing data, or as the substances are referred to, “the uncertain substances”, because we don't know. That's an issue primarily with the existing substances that have just undergone the categorization process.

I would argue that even with the new substances that do have to submit a data set, as I mentioned, there are areas of that data set that could be strengthened, and one that comes to mind is chronic toxicity, which would indicate a lot of carcinogenic effects. So this is something that is not adequately dealt with in the new substances regulations.

With respect to the existing substances in the categorization process, as I mentioned, where there is not enough data to indicate toxicity, bioaccumulation, and persistence with the high exposure, the substance is not looked at further. So those are a certain set of criteria, and either because there's no data or it's of an extremely poor quality, if there's not sufficient indication that those criteria are met, then the substance does not get categorized and therefore doesn't move on to the next more in-depth assessment phase.

So I would say that would not be an example of a precautionary approach, because those substances that are fundamentally missing data may still pose significant threats to human health or the environment.

Ms. Shannon Coombs: I thought that in the categorization process, because it was science-based, there was science there that you had to make some determination that it met the criteria, which are persistent, bioaccumulative, inherently toxic, or there was potential for human exposure. So there is science to make a determination of the 23,000, and the result is we have 4,000 that require further assessment.

Again, the government set the parameters of the science that would be involved in that program. It will be involved in setting the science and the parameters of what science will need to be part of the second phase, the screening phase. I think it's a bit misleading to say there isn't evidence out there, because the government is going to be looking at a wide range of data. While they look at other jurisdictions, they can also use other programs that are in place. For example, I mention the high volume program that they'll be looking at.

As well, if there is a data gap or it appears there is a data gap, before a determination can be made about that substance being continued to be used in Canada, industry will be challenged to provide that data to the government for the government to make their assessment and determine if that substance can continue to be used.

● (1720)

Mr. Paul Glover: Very briefly, perhaps on a slightly different tack, because of the way this discussion has evolved, I have some points I think are relevant. Dr. Khatter raised this, and I want to come back to it, as it's very relevant to this discussion.

First and foremost, it's important to recognize there is not a silver bullet in all this. If we demanded information from industry, as we do now, the departments still have an obligation to assess that, to determine if we can replicate that, if it's sound, if it's repeatable, and then work to draw a conclusion. When you take a look at how we receive that data, we have to validate it, make sure it is done according to standards, and replicate it.

The other point in all of this is that the science is evolving, so to ask for information on things like mixtures, cumulative effects, those are areas where we are concerned, but the science and its ability to answer that are still evolving. Some of these are areas where more research is needed—not just in Canada, but internationally—and there is an understanding of that.

If you take a look at the 23,000 chemicals, the number of potential mixtures, the number of ingredients that go into any one product, you could keep both departments busy for a long, long time on just one substance.

The Acting Chair (Hon. John Godfrey): Thank you.

The last question goes to Mr. Scarpaleggia.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you, Mr. Chair.

To clarify, I'm new to the committee. I know the domestic substances list is the list of 23,000 substances in trade. The toxic substances list versus the domestic substances list...I'm not too clear on that.

Mr. John Arseneau: Thank you very much for that question, because it's a very—

Mr. Francis Scarpaleggia: Sorry, and the priority substances list.

Mr. John Arseneau: Oh, I see, the priority substances list.

The Acting Chair (Hon. John Godfrey): Are you wanting all three? Do you want a sorting out of all these three lists?

Mr. Francis Scarpaleggia: Well, domestic, toxic, and priority, yes.

Mr. John Arseneau: Okay. The domestic substances list is all of those chemicals that are in trade in sufficient volume, and it's been added to over the years as things come through our new chemicals program.

The toxic substances list is schedule 1 in CEPA, where the government has concluded that a substance is toxic and requires management under the act, and therefore things go onto that list.

A priority substances list is a list that the ministers from time to time may nominate or declare certain substances as priority for risk assessment. We have had two PSL lists in the past and have conducted assessments on those. That represented just under 70 assessments, but because some of those were larger classes or combinations, it represented many more discrete substances than simply the number of assessments.

Mr. Francis Scarpaleggia: Now, categorization relates to....

Mr. John Arseneau: The domestic substances list. It was to take a look at the entire suite of those legacy substances in commerce to determine whether they met the categorization criteria as established in the act.

Mr. Francis Scarpaleggia: Mr. Larson, you mentioned that road salt was almost shut out of Japan.

Mr. Roger Larson: Yes.

Mr. Francis Scarpaleggia: So as I understand, the Japanese were taking advantage of a situation to create a non-tariff barrier. Is that...?

Mr. Roger Larson: No. They import their fertilizers; they don't have domestic production. They were simply afraid their public would lose confidence in their food production system if they allowed Canadian potash into their marketplace, and were looking at banning it on that basis. So, no, it wasn't a matter of their trying to create an advantage for a domestic industry, or anything like that.

● (1725)

Mr. Francis Scarpaleggia: How did you overcome that? How did you overcome the challenge? How did you succeed in preventing that door from closing?

Mr. Roger Larson: We and a few members of Parliament and a number of executives and scientists in my industry dedicated a huge amount of effort and time to try to explain to them that essentially the Canadian government didn't know what it was doing.

Mr. Francis Scarpaleggia: Let me just get this straight. They said "Our people are afraid because your potash has been declared toxic—under Canada's own definition."

Mr. Roger Larson: Yes.

Mr. Francis Scarpaleggia: "So we're not going to import this any more. But you've explained it to us, the leaders of industry and government. Therefore, we don't believe the consumer will be afraid any more."

Mr. Roger Larson: We've spent a lot of time explaining the system and the legislation that was used in Canada to the Japanese government and the fact that while Environment Canada did declare road salts to be CEPA-toxic, the Governor in Council refused to add it to schedule 1.

At this point in time, we have been able to maintain a level of confidence in Japan in our products. I would say we are pretty confident that we will be able to maintain that level of confidence into the future.

Mr. Francis Scarpaleggia: You talked a lot about the case of road salt. Do you think it's representative, in terms of being a business case to be used for challenging CEPA, specifically its toxic labelling? Or is it a very simple case compared to many of the others that CEPA deals with?

I don't know if you understand my question.

Mr. Roger Larson: I'm not sure. Maybe I'll try to answer it this way. The Deputy Minister of Environment appeared before this committee about a year and a half ago and stated that the use of the word "toxic" to describe substances such as ammonia and road salt was inappropriate and that there were better solutions, where substances—

Mr. Francis Scarpaleggia: Is there a way around this? Is there a compromise solution, where we won't be hindering more benign substances but we could still have a CEPA-toxic label for everything—

The Acting Chair (Hon. John Godfrey): Let me interrupt. I notice that Ms. Ginsburg has been trying to get in. We're also out of time.

Let me give you the last word, if you would like to answer that question.

Ms. Jessica Ginsburg: There are two things. First, as we are out of time, I just want to mention that we do have a full submission, which is currently being translated. It will be available to you within a day or two. Second, the concern from industry is that their substances will be "stigmatized", which I think is their term, by the use of the word "toxic". This term is not arbitrarily applied. It is applied following a rigorous assessment. Often there is due reason for concern.

I would close on that note.

The Acting Chair (Hon. John Godfrey): Thank you very much. We are on time.

Thank you, everybody. Thank you, witnesses, for coming.

We'll see you tomorrow morning at nine o'clock in the same room.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
http://www.parl.gc.ca
