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Chair

Mr. Bob Mills

Standing Committee on Environment and Sustainable Development

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● (1535)

[*English*]

The Chair (Mr. Bob Mills (Red Deer, CPC)): I call the meeting to order.

I will remind members that tomorrow we have a very full slate. We have something like ten witnesses for our final round table.

You will recall that we had the international activities meeting. We heard from all of our witnesses. What I'd like you to do, if you can, is to please review the testimony and submit questions that you might have had. We could then get answers to them. I think it was a very good session, but because of the fire alarm we never really got to ask the witnesses questions. I think this is the best way to deal with that, so that's what we'll do.

I'd like to welcome our witnesses.

Welcome as well to Mr. Glover and Ms. Wright. Feel free to jump in wherever necessary, as you do.

We'll begin with Kathleen Cooper from PollutionWatch, please.

Mrs. Kathleen Cooper (Senior Researcher, Canadian Environmental Law Association): Good afternoon.

We've prepared notes that we'll need to revise slightly, and only slightly, in light of Friday's announcements.

I'm going to talk about consumer products, and if there's time we'll get into the in-commerce list.

The Canadian Environmental Protection Act, 1999 gives the power to regulate toxic substances in consumer products and to make regulations controlling the import, manufacture, use, quantity, and concentration of substances in products, as well as for packaging and labelling. However, it's not been used. A number of things were suggested in Friday's announcement, and I'll talk about them in a minute.

The legislative overlap and interdepartmental jurisdiction issue to raise today concerns the issues between CEPA and the Hazardous Products Act. I've had many years of experience trying to advocate for better regulation of lead in consumer products under the Hazardous Products Act, and I have been extremely critical of it. It's product-by-product focused; it's entirely reactive; it comes into play only after very serious problems have been identified, and after damage, even death, has already occurred; and it's—painfully—slow. I've brought some examples to illustrate this, where the Hazardous Products Act was used to regulate lead in jewellery, and used, in my opinion, quite ineffectively.

Lead was banned from gasoline in 1990, and ever since there has been a steady stream of lead in consumer products, most particularly in jewellery. I have a whole bunch of examples here. The suggested level of lead that these products should not exceed was 90 parts per million. This key chain fob from the Lindsay Pontiac dealership in the town where I live is 535,000 parts per million. This necklace is 965,000 parts per million; that's 95% pure lead. I have a whole lot of examples. This lapel pin that was given out at a conference I went to on child care and early learning is 3,000 parts per million. I was given another one by the Canadian Institutes of Health Research, which was about 15% parts per million; that's 15,000 parts per million.

I have a whole bunch more of this stuff—it's as plentiful as pennies—but the only one of these that would be covered by the regulation that finally got put in place under the Hazardous Products Act after six years of talking is this one, because it's marketed to children. The regulation under the Hazardous Products Act is not effective in dealing with a problem that is very serious: a child handling or putting in their mouth this key chain fob that's 535,000 parts per million would be getting a very dangerous exposure to lead. I'm getting lead on my hands right now.

I go on a bit of a tangent on lead in jewellery, so I'll stop there.

Another and more recent example of a failure to regulate products is the PFOS chemicals. The announcement in the summer to address these chemicals exempts imported consumer products from regulatory action under CEPA. We are told that this may be addressed in the future; that remains to be seen.

The decision to regulate flame retardants—again, a decision made last summer—saying that we would ban under CEPA, or classify as toxic, the octa and penta mixtures of flame retardants addresses those that have already been voluntarily withdrawn. The ones we are not addressing, the deca-PBDEs, are increasingly in use and remain a serious problem, as their toxicity information is just as compelling, or almost as compelling, as for those others.

● (1540)

I brought with me a piece of foam. Everyone of us is sitting on PBDEs right now. There is a toxic legacy here of enormous proportions. We are still dealing with the problem of lead in paint, a consumer product from the 20th century, which remains an issue for 25% of the homes in Canada. It's something we'll need to be vigilant about and aware of for many decades into the future, in terms of toxic exposure to lead. That's nothing compared to foam and other places where PBDEs are in consumer products now in our homes, in our offices, in our child care facilities, and for which low-income people are going to bear the brunt as these products break down over time and become increasingly part of house dust. We need to ban these kinds of substances before this enormous legacy gets created for future generations.

Many of these examples we can discuss more. It's a situation where products are not adequately regulated, because trade trumps health. That is what happened with this lead in jewellery. Regulatory impact analysis under the Hazardous Products Act said the reason there was a choice to not regulate beyond the few that are marketed to children was that it would create an undue economic hardship for the costume jewellery industry. That was the rationale for not regulating a wide range of toxic lead products, and I find that unacceptable.

Another issue of overlap or confusion between CEPA and the Hazardous Products Act concerns the issue of hazard labelling. Again, I'll use another product to illustrate the points I'd like to make about this. This is a product called Goof Off, a very cute little title. It has several hazard symbols on it. It contains several substances, one of which is toxic under the Canadian Environmental Protection Act, 2-Methoxyethanol, or diethylene glycol monomethyl ether.

In Friday's announcements about the fact that more action is going to be taken on toxic substances in Canada, there is a lot of useful information on that new website, one of which is an area where there's a section of fact sheets about certain chemicals that are of interest to Canadians, and one of them is this substance.

This fact sheet says that this chemical is used mostly as a solvent and it was found at one time in nail polish remover, in all-purpose cleaners. Current information indicates 2-Methoxyethanol is now being used only in one consumer product, a cleaning solvent for white boards.

I checked because I thought, great, so it's not being used anymore, because my husband bought this at Canadian Tire about two years ago. I went to check at Heron Road and Bank Street, at the Canadian Tire today, and found this product still on the shelf. So this fact sheet on the website from Friday's announcement is incorrect. It's just an example of widely available products with extremely toxic substances in them.

The warning labels, the hazard symbols, as far as they go under the Hazardous Products Act work just fine, but it's only to prevent you from acute poisoning, blowing up or burning yourself badly, etc. That is not addressing the same sorts of toxicity concerns that are addressed under CEPA, the chronic toxicity issues.

If you look at the example of this chemical again, it's classified as CEPA-toxic. I'll give the government credit for what was announced on Friday, that there is apparently a plan to put this under the prohibition of certain toxic substances. They're going to exempt for certain occupational exposures...so maybe that will happen. I'm waiting to see it, because that is one of the few examples where there will be some kind of control on something that's in a consumer product. This chemical is a suspected developmental toxicant, a suspected endocrine toxicant, a gastrointestinal or liver toxicant, a suspected neurotoxicant—those chronic health effects that we address or we are supposed to start increasingly addressing under CEPA, which are not addressed under the Hazardous Products Act.

The solution that we're suggesting is the notion of a materials use approach. It would deal with the three things we're suggesting—materials use, better labelling, and recall powers.

● (1545)

So on the issue of materials use, what we're suggesting is something like lead, and this example. Lead is a very useful substance. There's no substitute for it, for example, in car batteries, X-ray shielding, or certain cable sheathing applications. It's an enormously useful substance and we wouldn't want to ban it. Plus it's naturally occurring. We wouldn't want to eliminate it completely.

But it's highly toxic. It should not be in the key chain fob sent to me by the War Amps trying to raise money. It's 75% pure lead, and my children could play with it and be poisoned by it. That's not regulated. So the notion of a materials use approach is that if it's declared toxic under the Canadian Environmental Protection Act it should not be allowed to be widely used, except under certain circumstances. So allow for the exceptions.

In the Goof Off example for this chemical, which is also toxic and is deemed to be toxic under the Canadian Environmental Protection Act, it would not be allowed to be used in something like this. Maybe there are a few occupational exemptions, and that's what's suggested in the fact sheet on the website. That would be it. It's much more efficient to say there are a few exceptions for the use of something and otherwise you can't use it, than to have to do what the Hazardous Products Act does, which is product-by-product individual analysis to determine whether it can be used or not. We can talk about that in more detail if you like.

There is the suggestion to get a better labelling arrangement in this country. As I mentioned, the Hazardous Products Act labels are good, as far as they go. In addition to the warning symbols, there's information on how you should avoid exposure through the use of protective gloves, glasses, or whatever.

But what is in place in California under Proposition 65 is for substances of chronic toxicity...the other concerns we've been raising. I have the example of patio lanterns. This is a product bought in the United States. Here's the Proposition 65 warning: “Handling the coated electrical wires of this product exposes you to lead, a chemical known to the state of CA to cause cancer, birth defects and other reproductive harm. Wash hands after use.”

I don't really like the fact that lead is in here, but I like to be warned and I think other people like to be warned as well about something like that.

Do any of you realize that when you handle your Christmas lights to put them on your tree this year you're going to have lead on your hands, and you should wash your hands after you do that, especially if your children are handling those lights?

So that's one of the suggestions we've made about existing provisions in other statutes in other jurisdictions that we think would be a useful and progressive amendment to make in CEPA.

Finally there is the notion of recall powers, the ability to recall products when a hazard is identified. We don't have that power under the Hazardous Products Act. We need it, and we have suggested a way of putting it in place in CEPA as well.

I know I've gone way over time, and I apologize to Kapil. In light of the announcements on Friday we've made a bit of progress, but we're still at the problem identification stage. Your job in reviewing this law is to really get at the notion that we need to be able to regulate products and not let trade trump health or environmental protection.

Thank you.

The Chair: Thank you, Ms. Cooper.

I understand, Mr. Khatter, you're just here for support.

Dr. Kapil Khatter (Director, Health and Environment, PollutionWatch): There is an additional part to our brief on the in-commerce list, but those are our main points. We can address the others in questions, if you like.

The Chair: That would be good. Then you can just kind of back up. We'll probably want to hear from Health and Environment too. You've introduced some pretty interesting things in this.

Mr. Godfrey, please.

● (1550)

Hon. John Godfrey (Don Valley West, Lib.): Indeed, Mr. Chair, I would like to hear from Health and the Environment.

My question initially—and perhaps more to Mr. Glover but not necessarily—is on the comments that have been made about how things actually work to date. Do you feel that is a fair reflection, or are there other factors that should be taken into account now that we've heard from Ms. Cooper?

Mr. Paul Glover (Director General, Safe Environments Programme, Department of Health): Thank you very much for that question.

There's been a very compelling presentation here this afternoon about areas where there are views that there's clearly room for improvement. We could talk about PBDEs, lead, PFOS, Goof Off, and each one of those is probably worthy of a little bit of exploration, but we should focus on the proposed solutions, which I think are quite helpful and a good starting point.

The Auditor General recently did a report with respect to how well the department was doing in enforcing some of the regulations and pieces of legislation the department is responsible for. The department has accepted those recommendations and has not disagreed with them. That, in many ways, speaks for itself. The tools are there. The department has struggled to enforce all the different components.

Lead is a particularly good example of the number of imported products and the need for inspection and enforcement, the difference between things being made in Canada versus being imported into Canada, and how you're able to stop all those at the border.

To be fair to Ms. Cooper and her presentation, there is also an issue of whether they belong in the product in the first place. What are the allowable uses? Again, that is something the department is looking at closely.

Labelling is a particularly challenging issue, and I would ask the committee to consider the balance there. The department recently introduced cosmetic labelling requirements. Those came into force in November. If you take a look at pesticide labelling, some of the pesticide labels are getting into small books, with the numbers of ingredients. So in some ways it's possible to lose the message, given the volume of information that ends up being required on the label. How to find that pertinent balance is always a particular challenge for the department. All of these things under the Hazardous Products Act are things that have been considered.

There have been debates about looking at that and including something like a general safety requirement, which would require manufacturers to know their product—how it's used, how it's disposed of, who they sell it to, how they sell it—so there isn't the potential to cause harm and create obligations in that regard. The department is constantly looking at how to try to improve the tool itself and is acknowledging that we have had some difficulties with respect to enforcement, as the AG pointed out.

Finally, with respect to the comment about recall under CEPA, some provisions exist today within CEPA if there is a regulation in place, if something is on the list of toxic substances, so there is a starting point within CEPA with respect to the recall powers currently available.

Do you want to add anything on recall?

Mrs. Cynthia Wright (Associate Assistant Deputy Minister, Environmental Stewardship Branch, Department of the Environment): Maybe a couple of points.

On recall, as Paul said, there has to be violation of a regulation. You could also use the interim order provisions to put in a regulation, if it was something that we just discovered was problematic, and then use recall powers on that.

To be clear, there are regulations dealing with products. There are quite a number in something called the Prohibition of Certain Toxic Substances Regulations. This has a schedule, and that regulation has the authority and is regulating, as Ms. Cooper suggested, when a substance is allowed—and certain products are not—or to what level it's allowed.

Then the point I'll underscore is that CEPA allows labelling requirements.

I mentioned at another meeting of this committee, that part of the issue is that CEPA has tended to deal more with industrial chemicals. Friday's announcement indicates it will start to deal with products, and so there are other authorities for materials in use, for labelling, and for recall under CEPA.

● (1555)

Mr. Paul Glover: Mr. Chair, I have one final point.

Under the proposed amendments to CEPA, Canada's Clean Air Act tries to make sure it is very clear that CEPA would deal with products that emit air pollutants, and that is also to provide clarity that CEPA could deal further with products in that regard.

The Chair: Mr. Godfrey.

Hon. John Godfrey: I'm a little confused about the borderline or the boundary between the Hazardous Products Act and CEPA. Is the former supposed to be more consumer oriented, and that's why it deals...or it doesn't, but it's supposed to deal with labelling, and CEPA is more behind the scenes? Is that the rationale? What is the distinction, since we're dealing with legislative overlap here?

Mr. Paul Glover: Presently, the way the department views the distinction is that the Hazardous Products Act would deal with the product in its entirety. It could deal with the individual ingredients in it, but it tends to deal with the product itself.

For example, there has been a lot of attention to baby walkers and those sorts of things. So the product itself is dangerous; its design is one that is problematic for the consumers. Another example is those little bath seats for giving babies a bath. There have been a number of drownings. The baby walkers were designed such that they could fall down stairs.

So it tends to deal with the product itself, whereas CEPA tends to regulate the ingredients.

The Hazardous Products Act, though, will prevent the sale of those products that might continue to have those ingredients, so it can be covered off at both ends—for example, products containing certain forms of asbestos and how those are controlled.

Hon. John Godfrey: If the Hazardous Products Act deals with the whole product, then the materials use approach would seem to have more to do with that than with CEPA.

Mr. Paul Glover: Absolutely, that's correct. A large part of the announcement that was made on Friday and the intentions of how the departments plan on using CEPA is to require industry to provide us data on how they're safely using these substances, satisfy us, and that they know how they're using these chemicals. Are there residual amounts in products? If there are residuals, what is the likelihood or possibility that these could lead to harm, could be released into the environment, and so on?

The Chair: I think Ms. Cooper wanted to—

Hon. John Godfrey: In fact, I would like to follow up with Ms. Cooper on this.

Is the reason you want CEPA to do it because you are unhappy with the way the Hazardous Products Act has done it, and you're trying to do a save, so to speak?

Mrs. Kathleen Cooper: I guess it's a little bit of both. The Hazardous Products Act is 37 years old, entirely reactive, and product-by-product focused, all of which is very cumbersome and slow. The example of lead is what I use to illustrate that.

As you know, we have identified in the last 15 years, especially the last 10 years, increasingly the fact that hazardous exposures indoors, where we spend most of our time, are originating from products. The Hazardous Products Act doesn't have the structure, the resiliency, or the ability to prevent those problems from happening. It reacts after a problem has occurred, and so far, anyway, it's only situations of extremely serious hazard, of well-known, well-established hazards of a small number of substances.

CEPA is addressing the entire range of chemicals in commerce and has the ability, and can increasingly have the ability, to address more chronic toxicity and a broader range of health effects.

The notion of materials use is an efficiency measure as well, as you get beyond that product-by-product focus. To me, it's more logically situated in CEPA than in a product-focused statute such as the Hazardous Products Act, but the two need to dovetail.

Hon. John Godfrey: Mr. Glover.

Mr. Paul Glover: I do not disagree with that comment. In fact, I think the challenge from the ministers of health and the environment, with their notice of intent over the weekend—while we don't necessarily use those exact words—is getting at how industry is using those products, what are appropriate uses, and what are inappropriate uses. That information would then be provided to the departments, and we can take action under CEPA and the Hazardous Products Act to ensure that there is the appropriate dovetailing.

But the action itself is being initiated under CEPA, section 71, and the legal requirements to provide the Minister of the Environment the data necessary to allow us to make that kind of assessment.

● (1600)

Hon. John Godfrey: So if I may summarize—and then I realize it's time to move on—there seems to be a bit of agreement that CEPA is the place to be more proactive. It has the tools and it is a more evolved piece of legislation; and until such time as we actually revisit the Hazardous Products Act in a similar kind of review to this one, we should be using it to be forward looking. There seems to be agreement on the panel between you.

Mr. Paul Glover: I think that's fair to say.

I'd also note, as was pointed out, that the Hazardous Products Act is one of the pieces of legislation the department would like to update. It is getting on there.

The Chair: Thank you.

Mr. Bigras.

[*Translation*]

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

I'd like to get back to the subject at hand, namely our efforts to better understand interdepartmental cooperation and legislative overlap.

As I understand it, the Canadian Environmental Protection Act, 1999 impacts not only Environment Canada and Health Canada, but other departments as well, including Fisheries and Oceans Canada, Transport Canada, Indian and Northern Affairs Canada, Foreign Affairs and International Trade Canada and Agriculture and Agri-food Canada.

What type of coordination mechanism have you put in place to ensure that all departments apply and abide by the provisions of the Canadian Environmental Protection Act?

[*English*]

Mrs. Cynthia Wright: Just to be clear, I think what you're getting at is that CEPA deals with regulated communities that are dealt with by other departments.

There are many mechanisms to ensure that Health Canada and Environment Canada are not at cross purposes to Transport Canada or Agriculture. In CEPA 1999, there is an authority to recognize that other acts have functions like CEPA in reviewing new substances before they come to market and doing an assessment. In those cases CEPA is essentially a benchmark, so the Governor in Council decided that where other pieces of legislation were equivalent to CEPA, there are schedules, and those departments do work that's similar but for different clients. So for seeds, feeds, fertilizers, Health of Animals Act, pesticides acts, they are looking after new substances in their domain and with their clients.

There is a lot of coordination and collaboration between risk assessors, because sometimes something is used in more than one area. Something might be used in a pesticide and it might be used in an industrial process as well. So the risk assessors have regular mechanisms for communicating with each other to make sure they're handling those new substance assessments in a coordinated way.

There are other ways we could regulate something under CEPA, but another body is already regulating it. A good example that we've dealt with in the last few years is radionuclides. These were radionuclides from mills and mining. The substance was found to meet the section 64 criteria under CEPA, but rather than having Environment Canada and Health Canada become a regulator, there's already the Nuclear Safety Commission. Environment Canada entered into a memorandum of understanding, and the Nuclear Safety Commission has the same authorities. It is actually managing this and reporting to Environment Canada on how well that's going.

There are other areas where we simply collaborate, such as Transport Canada. We coordinate with Transport Canada, which is doing other safety issues on a regular basis, and Environment Canada is regulating fuels and emissions from cars. It's a regular, ongoing cooperation between the two departments.

So I think it depends on the issue. There are several different mechanisms we're using, from formal memoranda of understanding to informal cooperative mechanisms.

The Chair: Mr. Khatter, I think you wanted in.

Dr. Kapil Khatter: Thank you, Mr. Chair.

I think what we're concerned about when we're talking about the interaction between acts is how weak CEPA appears to be in relation to other acts. Even within the Department of Health, besides "between" departments, we have a problem where substances can be regulated under CEPA when they're in consumer products or medical devices. But instead of the act saying they "should" be regulated by CEPA or that CEPA does that regulation, there's a weaker stance, that it "can" be regulated that way. What ends up happening is that it's left to other sections of Health Canada that use a different—

To give you an example, mercury in a thermometer can be regulated by CEPA, but it's left to the medical devices folks, who say they don't think mercury in thermometers is a problem. So mercury thermometers remain for sale in Canada. Another example would be the DEHP, the phthalates, in medical devices, which is toxic under CEPA. Health Canada, through CEPA, would have the power to deal with DEHP in medical devices, but it's left to the medical devices bureau, who, instead of taking on that responsibility, have shirked that responsibility to act in dealing with the DEHP problem.

● (1605)

[*Translation*]

Mr. Bernard Bigras: Pursuant to the Act: The Governor in Council shall not approve an interim order unless the Minister has consulted with other ministers of the Crown in right of Canada to determine whether they are prepared to take sufficient action to deal with the significant danger.

Can you tell me if there have been times when, further to the consultation process, an order was not approved by the Governor in Council?

Mrs. Cynthia Wright: This power is not often exercised. We're talking here about interim orders, about situations in which another department may be involved. The Department of the Environment is responsible for ensuring that the department in question does not take on this responsibility. If memory serves me well, this measure has only been invoked twice since 1988, and in both cases, the department maintained its authority. As I see it, this provision merely ensures that two departments will not resort to the same action at the same time.

Mr. Bernard Bigras: In your opinion, are there cases of duplication?

Mrs. Cynthia Wright: Rarely does this occur.

Mr. Bernard Bigras: I see.

[*English*]

The Chair: Mr. Glover.

Mr. Paul Glover: On the question of overlap, to be frank with the committee, we do try, and I appreciate Mr. Khatter's comments about certain parts of the department, in his view, shirking their responsibilities. The issue here becomes this: are those different parts of the department looking at the specific use, the material in use concept, and do they consider that appropriate?

Now, there have been instances where some of those things have resulted in certain different interpretations based on an appropriate use, and the department has had to come back and revisit. An example is a substance that's used in both a pesticide and an industrial setting, and what's a residual amount that's acceptable to be found in water. How do you find that? How do you set that? So there have been instances where, under two pieces of legislation—entirely appropriate, based on their use—slightly different conclusions have been arrived at. Those have been identified and reconciled.

So the process does work, but there are times when the interpretation of the science, based on the use, needs to be reconciled.

The Chair: Ms. Cooper.

Mrs. Kathleen Cooper: The point I was making on lead is that it was grandfathered into CEPA as toxic. There wasn't even a need for an assessment report back in the early 1990s.

We know that lead is toxic. My concern is not about overlap; it's about a gap when something is toxic under CEPA and this steady stream of consumer products can continue. We can talk for six years about the need for regulating this junk, but the only thing that gets regulated is 1% of the problem. That's a gap, and it's a problem that needs to be addressed. It needs to be put into a discussion around concern about overlap. I'm more concerned about gaps.

● (1610)

The Chair: Thank you.

Mr. Lussier.

[*Translation*]

Mr. Marcel Lussier (Brossard—La Prairie, BQ): I'd like to come back to Ms. Cooper.

I'm concerned about the large amount of $1 items that are sold. We're talking about vast quantities of plastic materials.

In your opinion, should these small items be controlled in some way?

[*English*]

Mrs. Kathleen Cooper: I don't think there is enough. First of all, there isn't a regulatory framework that determines whether or not they should be there in the first place. There's an assumption in the public's mind that if something is on the shelf it's been evaluated and determined to be of acceptable risk, or safe and okay to be on the shelf. That is a false assumption to make.

It's very challenging for Health Canada to do the kinds of inspections that are necessary to address the vast range of products. It's understandable. You can't test everything before it goes on the shelf, nor is there the capacity to do the kind of inspection that I think would be necessary to be able to avoid toxic things being on the shelf. That said, there's probably an argument to be made for increased inspection.

Again, the notion of a materials use approach is an efficiency measure. It says if it's toxic, don't use it unless we've said these are the exceptions, rather than chasing after one product after another and not knowing. In the example you use, that's my greatest concern as well. In the dollar stores, the cheap stuff is economically accessible to children and/or low-income people. It's often the place where you're getting the exposure to phthalates, the exposure to lead, the exposure to various substances that are of concern. It's a social justice issue, a children's health issue, and we need an efficient response to it, I think, that doesn't have to chase down each and every thing every time something comes up.

The Chair: Mr. Cullen.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Thank you, Chair.

I'm going to pick up on this. It seems to me, when I look at the list of chemicals that have been listed and identified, now we're going to be going through a type of triage. Even the pace described—maybe I can get a determination of when we do get through the 4,000. What's the estimate right now of assessing and applying some sort of management regime for the 4,000 chemicals that we've identified as being potentially harmful? What's the horizon? When is that process likely to finish, given the current funding?

Mr. Paul Glover: Given the funding that was announced, rather than current funding?

Mr. Nathan Cullen: Sorry, yes, funding announced.

Mr. Paul Glover: There is a significant acceleration. We're moving from the two departments doing about 10 assessments a year, which would cover a number of substances larger than that—there could be more—to moving forward with between 15 and 30 through the challenge program every quarter. There are a couple of things that make the answer to your question a little difficult in terms of a precise time, but if we talk about a number of specific things that will happen, there have been 500 priorities that have been identified, and those are being acted on immediately.

There were 150 substances that met the criteria, that are on the domestic substances list, which means they are allowed for use in Canada, and we're going to say those should no longer be used. And that was done over the weekend. There's the challenge program for industry, which speaks of 200. There are another 150 where we're going to say there are limited uses that are acceptable and that's it, we will do that. That will deal with essentially 500 of the 4,000 in very quick order.

We've committed to also doing rapid screening assessments, by the spring, of another 1,200 to come through regulatory conclusions, where we think that's straightforward.

Mr. Nathan Cullen: If I start to crunch those numbers a bit, and take out the ones that you've lopped off the list—

Mr. Paul Glover: I haven't finished.

Mr. Nathan Cullen: There's more.

Mr. Paul Glover: There will be 1,200 rapid screening assessments; there are the 500 that have been dealt with in very quick order. What we have then committed to is saying we will continue that process with those that are still left in the 4,000, the other 2,500 to 2,800.

We have also said to industry that we're happy not to have to wait to continue to do that. If you would like to take a look at those substances, come forward with data on those that will allow us to move more rapidly through that, and we will be able to move through this more quickly.

Right now the plan is to get through those 200 in the challenge program within three years. For industry that is willing to come forward to work on some of the other substances that have been identified—and industry is already stepping up, saying we don't want that stigma you've heard so much about attached to us; we're happy to look to negotiating how we can move away from these, to what timeframe. We're hopeful we'll be through this fairly quickly.

● (1615)

Mr. Nathan Cullen: I was wondering if Ms. Cooper could respond to that in terms of past experiences and the plan that's been proposed. Know that the reason I'm asking these questions is not as much to attempt a criticism on what's been suggested, but just to have some sort of realistic understanding, based upon our experience with tackling these. Is the approach we're taking with the timelines that are given the appropriate one?

Mrs. Kathleen Cooper: I think what was announced and what was just outlined is a good step forward. It's been a roller coaster of a weekend for a lot of reasons, so I'm not exactly sure, but I'm pretty sure—and Kapil has looked at it as well—that the timelines that have been suggested for this next round that Paul just outlined roughly correspond with the recommendations we've made to the committee to enshrine in CEPA.

Is that true? Could you comment on that?

Dr. Kapil Khatter: I think we're fairly happy with the timelines. The real question, of course, is which way these assessments are going to tip or how precautionary we're going to be when we're making these decisions. How protective are we going to be in making these decisions? In particular, in the context of consumer products, we're concerned about a trend towards exempting consumer products as one of the things from the prohibition. For instance, when PFOS was gazetted to be prohibited, the imported consumer products were exempted, and that's exactly where we would think there would be a problem if there was one.

Mr. Nathan Cullen: So it can be said that we should not just rely on the fact that a process is being engaged on 4,000 chemicals, but it's as much the criteria that are then getting applied and to what standard.

This brings me to a question around the indicators we use. Do we use vulnerable populations? What's the threshold where we say for this particular chemical this is the amount we consider acceptable after comparing it to the background and all the rest? I know there was some talk in the previous government of using indicators for children, seniors, vulnerable populations, as that threshold mark—not beyond this. Has there been any advancement beyond this that anyone has seen? Are we using other criteria and indicators to do it?

Mrs. Kathleen Cooper: I think there has been advancement in terms of enshrining the requirement to do that in the Pest Control Products Act. It's why we've suggested it in CEPA, to make it required. It has been departmental policy for several years to address vulnerable populations. The modernization of risk assessment approaches has been occurring over the course of, I'd say, the last ten years, to be fair.

Mr. Nathan Cullen: One of the conditions or concerns in the previous process—and you can correct me if it's changed—is that there was this order in council process that was engaged. It became political, things delayed it, and things weren't getting listed. They had to go through very onerous processes that the cabinet never got to.

Mrs. Kathleen Cooper: That speaks to another one of the recommendations we have made, which is the decision about risk. The decision to decide that a substance is CEPA-toxic is a scientific decision and should not be a cabinet decision.

Mr. Nathan Cullen: Would you concede that there must be some room for economic considerations? Mr. Warawa and others have pointed out the risk versus hazards approach and all the rest. If something is buried deep inside a concrete product that's deemed harmful, the economic impact would be billions of dollars to remove something about which someone would say the hazard isn't great because it's not contaminating people.

Dr. Kapil Khatter: There is room for a socio-economic analysis when we're trying to decide what to do with something once we've decided it's toxic. But the actual risk assessment to determine whether something is toxic or not should fundamentally be a science decision. We support the idea that the minister be able to make that decision without cabinet approval.

● (1620)

The Chair: Mr. Glover is trying to get in here.

Mr. Paul Glover: The member has raised a number of issues the member that I'd like to come back to.

First of all, with respect to the accountability in the measures, part of the plan that was announced speaks to bio-monitoring, which will be looking at what levels we're finding in people. In tandem with that, as we move forward with the risk assessments, we will be able to set measures. Part of doing that tracking will be to make sure we never approach those levels.

Mr. Nathan Cullen: Walk us through that. Are we taking individual samples from people across the country, watching them over a number of years, and saying the lead's too high, we need to do something more?

Mr. Paul Glover: Yes. So as we do an assessment, we'll say we do not like a substance, or we do but we would never want to see it above this level. This program of bio-monitoring will then allow us to track progress. So risk assessments will set those levels and will allow us to move forward.

With respect to the pace, the other thing I should point out is that Canada is the only country in the world at this point in time that has been able to come forward, as far as I know, with a plan to the meet the SAICM commitment, which is the Strategic Approach to International Chemicals Management. We'll be done well ahead of the international deadline, which is 2020. They view it as a very long-term approach, and we're moving very aggressively. This committee has asked in the past how many assessments we've done since CEPA 1988. There have been about 500 substances. We're going to be moving that much through very quickly, as I've just pointed out.

Mr. Nathan Cullen: I have a question about the independence of the reviews that are being done. I'm not talking about grandfathered chemicals now, but ones being brought onto the market. There's been much conversation with the witnesses we've had about the precautionary principle, about reverse onus being on the companies themselves.

Ms. Cooper, what's the state of affairs right now, from your perspective, in terms of new chemicals' being introduced, in terms of the rigour and the independence of that inquiry, and in terms of whether the precautionary principle is being applied sufficiently?

Mrs. Kathleen Cooper: Are you asking with respect to new chemicals or with respect to what Mr. Glover has been talking about?

Mr. Nathan Cullen: I am asking about new chemicals.

Mrs. Kathleen Cooper: It's for new chemicals.

Mr. Nathan Cullen: Is the onus upon the industry introducing the chemicals or does it remain entirely in the public sphere for government to satisfy constituents?

Mrs. Kathleen Cooper: Paul wants to answer, but no, the onus is on proponents—industry—to provide data. However, I would say that the evaluation also considers more so-called independent published peer-reviewed literature and/or it should. That's certainly the case for the evaluation of pesticides, which I know a bit more about, as far as being more up to date on new substances goes. There is a lack of transparency in all of this that, again, you can do something about with amendments to CEPA.

But let's let Paul talk.

Mr. Paul Glover: I wasn't trying to interrupt the witness.

Mr. Nathan Cullen: You're enthusiastic, that's all.

Mr. Paul Glover: There are similarities and differences. Without question, the issue of transparency on the new substances side is less than it is on the side of existing substances. I would remind members that we have discussed that in the past. The issue is confidential business information with which industry is able to come forward. The onus is on them to provide the government with the data we need. But it is often cloaked with confidential business information that does not apply, or tends to apply less, to substances that are already in commerce, which we will be dealing with through the existing substances side.

In an effort to improve accountability, I'd just point out, a portal has been launched with information on all of these substances, so as the public increases its awareness about these, they will be able to find information about them. If, as we've seen, they're starting to show up in places we don't suspect, there's an opportunity for them to provide us with questions and information that will help us as we move forward.

The Chair: Mr. Cullen, we're going to have to move on.

Mr. Nathan Cullen: Thank you, Chair.

The Chair: We have Mr. Warawa and Mr. Vellacott, I believe.

Mr. Mark Warawa (Langley, CPC): Yes, thank you. I'll be sharing my time with Mr. Vellacott.

Thank you again to the witnesses for being here this afternoon. I found it quite interesting.

I'm going to start off by asking Kapil his opinion on the announcement last Friday of Canada's chemical management plan.

We've heard from Ms. Cooper. Thank you for your presentation. I have a question for you in a moment.

But generally speaking, in the brief that you provided—and I thank you for this—there were a number of recommendations. Do you think our chemical management plan is a good step in the right direction?

● (1625)

Dr. Kapil Khatter: Thanks for the question.

I think there are kind of two parts to the announcement. In a way there's the announcement of what's been in the hopper, the kinds of things that Health Canada and Environment Canada are doing about flame retardants, about PFOS, about various other substances. Much of that, at least for us, is stuff we already knew about. It's stuff that's been in the process. We are fairly happy with the timelines for the assessments of the substances on the domestic substances list. So we're happy to see that the departments are being aggressive about moving on those substances. We're still at a point where we need to watch and see how those assessments tip, how precautionary those decisions are, whether declaring something toxic is going to deal with its presence in consumer products or not, how many of them are going to be virtually eliminated or prohibited, and how many of them are going to be risk-managed, to what degree they're going to be risk-managed, and what our standard is for protecting Canadians. Those are things we can't tell from the announcement at this point.

Mr. Mark Warawa: Okay, before I come back to you, Ms. Cooper, I have a question for Mr. Glover or Ms. Wright.

There were a number of examples that Ms. Cooper provided regarding lead—and Bill, you used the example of mercury. So particularly lead is being controlled through children's products, but for adult products, consumer products generally, there is a lot of lead out there exposing the adult population.

Could you respond, because I've heard general comments, but why is lead not being dealt with, or are there plans to deal with it in the near future, with the exceptions that you listed—X-ray, batteries, and what not? So there are exceptions for its safe use, appropriate use, low-risk use, but generally, concerning the cosmetic jewellery that she showed, why is it still on the market if it is an item of risk?

That was your question, I believe.

Mr. Paul Glover: With respect to the question, and to do it full justice, I would prefer to submit a written response of all the different actions that the department has taken with respect to lead and any of the gaps that currently exist.

Mr. Mark Warawa: Okay, thank you.

And Ms. Wright, the same?

Mrs. Cynthia Wright: Yes. Lead in CEPA has been largely industrial processes—lead smelters and that sort of thing. In terms of consumer products, I couldn't give you an answer on any plans forward on consumer products and lead.

On mercury, I know there has been an intention to develop a strategy on mercury products, and that will be coming soon.

Mr. Mark Warawa: I look forward to that.

Ms. Cooper mentioned the fact sheet on the web page that was just opened. Would you comment on that? She said the fact sheet on the web page was incorrect with specific substances. Do you have any comment on that?

Mr. Paul Glover: Thank you very much for that question.

I would start off by accepting her congratulations that it has a lot of good stuff on there, so I would consider it a step forward from where we have been in the past.

There are a number of issues there. As we've said, there are a lot of products. We're not able to inspect all of them. There is a built-in mechanism within the website for people to submit questions to us about these and, when they start to find substances in places where we don't think those should be, to report those, so that will help us. In some respects, I'm not surprised that we see these sorts of things.

The other issue that is somewhat challenging for CEPA is what's called an inventory update rule. We do our risk assessments based on some data that isn't always as relevant or as current as we would like, and there is an opportunity for us to make sure that is evergreen—for example, the categorization exercise, which we're very proud of. But the domestic substances inventory hasn't been updated since 1989, so we have to do section 71 surveys on each specific substance to find out new uses or put them on the national pollutant release inventory.

We'll continue to make sure that website is as accurate as possible. We believe it is, based on the information that has been submitted to government, but we're not at all surprised to find some irregularities, and we'll follow up on those.

● (1630)

Mr. Mark Warawa: Thank you.

How much time is remaining?

The Chair: We have four minutes left.

Mr. Mark Warawa: Okay, I have just one very quick comment to Ms. Cooper.

I'm sorry, I've run out of time. I was hoping to ask you a question. The Clean Air Act deals with indoor air quality. So with your comments regarding substances and foam that breaks down and adds to the house dust that we breathe in, I think that's another good way of dealing with indoor air quality and substances.

Mrs. Kathleen Cooper: Can I respond to that?

The Chair: Can you do it as part of Mr. Vellacott's question and answer, please?

Mrs. Kathleen Cooper: Okay.

Mr. Maurice Vellacott (Saskatoon—Wanuskewin, CPC): The commissioner, when she was here, noted the fact that energy and transportation sectors make up the bulk of Canada's emissions that harm the environment, and yet energy and transportation policy is primarily outside the environment portfolio.

I have about three questions here. My first one is this: how can we ensure that for things like energy and transportation, environmental policy is not developed in isolation, but rather, is made complementary? Should we have some body that oversees that type of thing between the different departments in a more forceful way?

I guess I'd put that to the department people first, and then I want to get a response from the others too.

Mr. Paul Glover: I do health.

Mr. Maurice Vellacott: You do health, yes, exactly—it's the same question.

Mrs. Cynthia Wright: In the whole vehicles and fuels area, there is already strong cooperation with Transport. Then on energy, as we develop new regulations dealing with the energy sector, NRCan is part of the consultation process we're doing now, and part of working with us.

Mr. Maurice Vellacott: Do you feel it's strong enough as it presently is, complementary enough? You don't have departments claiming the turf, and so on? Does that need to be mandated in some way, or just simply—?

Mrs. Cynthia Wright: I think there's good cooperation among the three principal agencies on what you're talking about: Transport, NRCan, and Environment Canada.

Mr. Maurice Vellacott: Right. And you have no problems with the way it's working now?

Mrs. Cynthia Wright: No.

Mr. Maurice Vellacott: Okay.

Mrs. Kathleen Cooper: At the risk of talking when I haven't prepared myself on the topic, because I focused on products, I think you're pointing out a really important issue. You're focusing on areas where the concern is the greatest, in terms of health concerns from air pollution, and in particular on concerns about the smog-forming air pollutants, the so-called "criteria air contaminants" that are primarily coming from transportation and some large industrial sources.

The inter-jurisdictional issue of concern there that needs to be addressed, where standards need to be strengthened, is Canada-wide standards.

Mr. Maurice Vellacott: Interdepartmental, probably, more than inter-jurisdictional, but—?

Mrs. Kathleen Cooper: Yes, it's interdepartmental, but it's also an inter-jurisdictional issue, because we have tended to put to the level of Canada-wide standards some of the most difficult and intractable issues, such as the smog-forming air pollutants, and we need to do a better job of controlling them.

I guess I would respond just to point out that you've identified one of the key problems, and that the regulatory responses need to be addressed partially in that framework as well.

Mr. Maurice Vellacott: In fact, in the United States they have what they call the National Environmental Policy Act of 1969. For all those other departments that are not specifically designated to protect the environment, it describes the degree of cooperation expected or required in carrying out those duties, even if they're not the designated department.

Going back to the department people again, do you not feel we need anything such as the U.S. has that lays it out very specifically, as they do in their 1969 act?

Mrs. Cynthia Wright: Well, we already have two similar mechanisms to those in the U.S. We have the requirement for all departments to do sustainable development strategies. We also have all departments signed on to implement the toxic substances management policy of 1995.

Mr. Paul Glover: From Health, where there are questions about health benefits, health consequences, we are regularly called upon to provide our opinion. We have trouble neither in offering to provide it nor in being asked for it. It happens quite frequently.

● (1635)

Mrs. Kathleen Cooper: Another mechanism, which has been suggested by Toronto's medical officer of health in a report addressing children's health as well as been supported by my organization, is the notion of an overarching mandate and cross-departmental commitment to ensuring children's health protection across all of the areas where regulated activities can have an effect on children's health. It's a way of focusing attention and requiring coordinated activity across multiple departments, because issues of children's health will arise across multiple departments, in the examples you give and in others.

If it's at that level of commitment, there's money for it, there's coordination, and it gets done.

The Chair: Thank you, Mr. Vellacott.

We'll now go to the second round, which is five minutes.

I understand you're going to share your time, Mr. MacAulay and Mr. Ignatieff. Go ahead, Mr. MacAulay.

Hon. Lawrence MacAulay (Cardigan, Lib.): Yes, thank you very much, Mr. Chair.

Welcome to the witnesses.

Mr. Glover, you'll have to approve new chemicals, for example in the agricultural sector when they come onto the market. That's handled, of course, with great confidence. I believe you indicated that previously.

And that is correct, isn't it?

Mr. Paul Glover: Correct.

Hon. Lawrence MacAulay: There are a lot of dollars that go into developing these things.

Ms. Cooper or anybody, between Health Canada and Environment Canada, is there good cooperation? Is the overlap causing a problem? You referred to the mercury thermometers falling through the cracks and to things that are not happening. Is that because of overlap? Is it because of not enough clout? What is the problem that these things are happening? Is there a problem with the two departments?

Mrs. Kathleen Cooper: You started out talking about agricultural pesticides, and that issue is a little different.

Hon. Lawrence MacAulay: It is totally different. I just wanted to make that clear. Having dealt with it all my life, I think it's something that's very important. I want you to indicate if the cooperation with Health Canada and Environment Canada has been what you want. Has the overlap been a problem? Is there a problem in that area?

Mrs. Kathleen Cooper: My colleagues, who worked for the last six years on the DSL categorization exercise, were often frustrated with the lack of coordination between the two departments. I think it's improving, but I need to defer to my colleagues, who have been involved in the deep details of that more so than I'm able to convey to you today. We could certainly do more in writing on that for you. I just don't feel I can respond in the way that would do it justice, but Kapil was involved in it in more detail and I think he should address it.

The Chair: Mr. Glover can jump in, and then we'll go to Mr. Khatter.

Mr. Paul Glover: The departments would acknowledge that historically this is a problem we've heard a great deal of comment on. In recent years, they have moved quite extensively in this area, to the point where stakeholder engagements are now coordinated between the two departments and are often run jointly by the two departments. There will be a morning session on the environment and an afternoon session on health, so we're not going to the same people one week after the other. We get them into the same city, the same hotel room, to talk about the issues in an integrated fashion. Cynthia and I toured the country together in trying to prepare for this. I understand that it's not my view that you care about, it's the stakeholders' views. I just want to report that we have heard of those problems and have been acting on them.

Mrs. Kathleen Cooper: I would say the situation has improved.

Go ahead, Kapil.

Dr. Kapil Khatter: Having followed the categorization process, we have seen departments learn to work together better. They had a joint announcement. That was a victory, I think. The example that I gave before was medical devices and consumer products. We're unclear, on the outside, as to what the power and balance or the difficulties are within sections of a department like Health Canada, with one part of the department having the responsibility and not the other, but I think that's something that needs to be dealt with at the ministerial level.

Hon. Lawrence MacAulay: On the regulatory burden on industry itself, is there much of an effort in government to make sure that burden can be lessened on industry with the regulations as they come on?

● (1640)

Mr. Paul Glover: The government has been fairly clear that we're expecting industry to share with us data that they have in their possession, that reverse onus concept. If they do that, they will be acknowledged for the best practices they use that will inform regulation. The extent to which the plan rewards industry is dependent upon the level with which they cooperate.

Hon. Lawrence MacAulay: You just deal with the information they provide, and if it's not proper information, then it's dealt with in another manner.

Mr. Paul Glover: If it's not sufficient information to help satisfy the ministers about precaution, as the witnesses have said, then in all likelihood the ministers will move forward on a precautionary basis, given that industry has not been able to demonstrate that they're using the substance in a way that doesn't harm the environment or doesn't harm human health.

The Chair: Mr. Khatter.

Dr. Kapil Khatter: In terms of confidentiality, we have in the past proposed a separation between business-confidential information and test data. What is happening with the new substances notification program is that there is just not enough transparency for us to be able to say whether they're doing a good job or making precautionary decisions and that test data needs to be public.

Mrs. Kathleen Cooper: We will be suggesting amendments to that effect. They will be comparable to the ones that were put in the Pest Control Products Act. There's a precedent already in terms of what has already been done in the law, to make a distinction between CBI and confidential test data and to make the availability of data more transparent.

Hon. Lawrence MacAulay: But if you make the availability—

The Chair: Mr. MacAulay, we're getting quite a bit over your time. You'll have another opportunity.

Mrs. Kathleen Cooper: I'm not talking about getting access to CBI. I'm talking about the test data.

The Chair: We'll go to Mr. Harvey, please.

[*Translation*]

Mr. Luc Harvey (Louis-Hébert, CPC): Earlier, Ms. Cooper talked to us about products with a higher lead content than approved under the CEPA. Theoretically, the amount of lead in a product should not exceed 90 parts per million. In reality, this threshold is exceeded by several million parts, a none too insignificant amount. Furthermore, lead can be found in products designed for children.

How do manufacturers manage to get around the rules which, in principle, were designed to prevent problems like this from occurring?

[*English*]

Mrs. Kathleen Cooper: First of all, lead itself is toxic under CEPA. CEPA doesn't then regulate lead in products, and in these products in particular. We have addressed this problem under the Hazardous Products Act. After six years of talking about it, we came up with a regulation that made, in my mind, a completely artificial distinction between children's jewellery and jewellery in general. The only thing that was regulated under that regulation was jewellery marketed to children. First of all, there are other things that aren't jewellery, like key chain fobs. The one I have here is 535,000 parts per million.

The regulation under the Hazardous Products Act addressed perhaps 1% of the problem, in my opinion. The stated reason in the regulatory impact analysis was that to go beyond the regulation of jewellery for children would constitute an unfair economic hardship to the costume jewellery industry. That makes my blood boil, because what's being valued there, what's being decided there, is children's health versus an unfair economic burden to the costume jewellery industry. It's an absurd balancing act. The notion that a distinction can be made between jewellery marketed to children and a key chain fob or a necklace marketed to me as an adult is absurd. I will still have the lead on my hands from handling this, or I may have a necklace on. I'm sure you've seen women holding a baby, and the child will put her necklace in its mouth. Or you give your keys to a child to distract them. So the notion of making that separation is absurd.

The other thing was the previous question about what has been done. In Health Canada, there's a lead risk reduction strategy. Again, it took ten years of talk to put this together to address this, and this is just one example. There have been many other examples of lead in consumer products, such as in the zippers on children's clothing, in sidewalk chalk, in crayons, etc. The last time I checked was about two months ago, but this lead risk reduction strategy is still a draft on the website. That's all it is. It's a discussion paper. It's a suggested risk reduction strategy. It's not regulatory. The only regulatory approach to any of this, after nearly fifteen years of talking about it and seeing these products on the market that contain a substance that is CEPA toxic, is one regulation dealing with, in my opinion, 1% of the problem.

● (1645)

[*Translation*]

Mr. Luc Harvey: Mr. Chairman, do I have any time remaining?

Ms. Cooper is touching on some very broad issues.

The Chair: You have one minute left.

Mr. Luc Harvey: What steps is the department taking to resolve these issues and move forward?

Mr. Paul Glover: As I said, I don't have this information with me. I will forward my response to the committee through the clerk.

[*English*]

I'd prefer to provide a comprehensive response on all of the actions the department has taken on lead, and where further opportunities might be available. I regret to inform the committee that I'm not in the position to speak to the details about lead and the department's actions today, but we will respond through the clerk.

Mrs. Kathleen Cooper: Just as one more brief comment, I use lead constantly. I can't get away from lead. My brother-in-law calls me Lady Lead. I've been dealing with lead for 25 years. I'd really like not to have to anymore, but I really just use it as an illustration of the broader problems. This is a problem, obviously. I think to myself that if we can't get lead right, how are we going to get all these other toxic substances right in consumer products? That's why I keep hammering it home, plus everybody knows about lead. I just want to point out that we have to get it right on more than just something we already know a great deal about.

The Chair: Ms. Cooper, I just wonder why they would use lead. It must be more expensive than plastic. Why do they use lead?

Mrs. Kathleen Cooper: Lead is dirt cheap. Lead is incredibly useful. It's malleable. It has a low melting point. It's really durable. It has all these properties, which is why people have used it for over 2,000 years. It's really cheap, and it's probably coming out of your old computer, my old computer, and computers that are being recycled by children in China, Korea, or wherever. It's a circle of poison. It's like the pesticide circle of poison, but it's just a new one. I can't verify that, but I'd like to.

I think Kapil wants to talk.

The Chair: Okay. We are way over time, but I think we do have the time.

Mr. Khatter, and Mr. Glover, very quickly.

Dr. Kapil Khatter: Just quickly, we're always talking about substitution and reasonable alternatives; zinc is a reasonable alternative for lead. It's a little bit more expensive, and the regulatory impact analysis statement says we could substitute all of this—all of this stuff could be made up of zinc—but they don't want to put that burden on a foreign costume jewellery industry.

The Chair: Mr. Glover.

Mr. Paul Glover: Not speaking about lead, but to the second point of Ms. Cooper's presentation, that lead is an example where CEPA can play a role, I would like to point out to the committee that this is what we're beginning to do. In the example Ms. Cooper raised, that the actions weren't sufficient or didn't go so far as to deal with deca-PBDEs, CEPA has traditionally dealt with ingredients in the industrial sector, and PBDE is an ingredient now being dealt with as no longer acceptable in finished products. So the departments are beginning to use CEPA as a tool to take a look at ingredients in consumer products.

The Chair: Thank you.

Mr. Bigras.

[*Translation*]

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

Further to the $300 million announcement, the department presented a file to us on Friday containing a report on the issue of child safety. My colleague Luc touched on this matter earlier. Ms. Cooper spoke at length about the lead problem and it's clear that young children are especially vulnerable.

You stated in your press release that henceforth, the same stringent evaluation process - you use that word in your press release—will apply to existing chemical substances introduced between January 1, 1984 and December 31, 1986. Do these stringent evaluations include genetic neurotoxicity tests?

● (1650)

Mr. Paul Glover: I'd like to give you a somewhat longer answer, but the short answer to your question is yes.

Mr. Bernard Bigras: Will all products, both old and new, undergo genetic neurotoxicity tests?

Mr. Paul Glover: No, because it all depends on the substances and the possibilities.

[*English*]

We will not submit every substance to exactly the same test.

[*Translation*]

Each substance cannot be evaluated the same way.

[*English*]

We will look at where the literature leads us to believe the health endpoints are, and we'll follow those appropriately. We will make sure that we consider vulnerables, whether aboriginals, seniors, children, and look to the specific vulnerabilities of different populations.

[*Translation*]

We try to find the most vulnerable population groups for the purposes of our evaluations.

[*English*]

The evaluation will be based on the most vulnerable population, and the assessment follows the science, which leads to the different types of health endpoints. If something is...cancer in the liver and there's no evidence that it leads to developmental issues, we wouldn't go there. So we follow the science.

[*Translation*]

We follow scientific methods.

[*English*]

Mrs. Kathleen Cooper: That's understandable, and I grant you it's necessary to do that. The difficulty, particularly in the example you mentioned, developmental neurotoxicity, where there are impacts on the developing brain, is that we know so little, and we need to know a great deal more. The numbers of children with learning or behavioural problems in this country are very high; we're talking about 25% of children with one or more learning or behavioural problems. You cannot make a relationship between those statistics on neurological development in children and the existence of chemicals in their environment and the fact that some of them are suspected in developmental neurotoxicity. You can't; there's not enough evidence to make that link.

But if you put those two things side by side and you see that children are exposed to suspected neurotoxins and you see those kinds of numbers in the child population, to me, that's a red flag. It says, look more closely here. And when you have an approach, a regulatory evaluation approach, that says we follow the science, the difficulty is that if there isn't the science already there and you therefore don't require it, you could be missing something extremely important.

So that's why my organization and organizations in the Canadian Partnership for Children's Health and Environment have made the recommendation that the core testing requirements be expanded to not just look at genotoxicity and carcinogenic cancers, but also to expand the battery of required core testing to include developmental neurotoxicity, so we can get at the problem. This is a way of prioritizing where you look, to go for the areas where large numbers of children are potentially affected.

Mr. Paul Glover: Very briefly, to complement that response, under CEPA, Health Canada is required to conduct research on endocrine-disrupting substances, which is a long scientific way of saying those things that have developmental impacts. The department does attempt to do that and does acknowledge and concur with the witness that this is an area in which the science is still evolving. It raises more questions than it answers, but we are attempting to answer those questions, and we do conduct research in this area.

The Chair: Thank you. Thank you, Mr. Bigras.

We'll go to Mr. Ignatieff.

Mr. Michael Ignatieff (Etobicoke—Lakeshore, Lib.): I did want to come back to the lead issue.

Again, I appreciate the earlier answers, which said that you needed to give us a written answer. But can we do it as a hypothetical? That is, how would you react to the possibility of the materials use approach proposed by Ms. Cooper as opposed to a product approach? Is that feasible? Is that doable?

● (1655)

Mr. Paul Glover: The short answer is yes. We would use different words, but I think the concept is the same. The challenge function launched on Friday is about having industry likely do with new substances what we would like them to do with existing substances, which is demonstrate to Environment Canada and Health Canada that they can use that substance in a way that does not cause harm to the environment or to human health, and that will include all the ranges. So some industries might be able to demonstrate that they can do that and others might not. That will allow us to target our regulations more efficiently.

The second thing is that the only way we will get through categorization and the timelines that have been imposed is if we move away from a substance-by-substance approach to look at classes or categories of substances and the industries that use them. So we will be looking at industrial sectors and strategies as well as at classes of substances that have similar chemical properties, and we will try to deal with those in groupings.

Mr. Michael Ignatieff: A second question, in relation to the chemicals management plan, is about capacity. This is an ambitious plan involving assessment, regulation, and enforcement. And I just need to know whether it's possible for you to assess whether government currently has the capacity to deliver on assessment regulation and enforcement here or whether you're going to need substantial increases in capacity so this isn't just a paper announcement.

Mr. Paul Glover: If the member could clarify capacity in terms of dollars or expertise, the answer would be clearer.

Mr. Michael Ignatieff: It's expertise, but it's about what enforcement capacity you currently have and what enforcement capacity you would have to scale up to in order to meet the new chemicals management plan outlined last Friday.

Mr. Paul Glover: There is no question that the departments will be staffing up in order to meet these aggressive timeframes and that the resources provided, some of them, will be directed to new staff to speed up the risk assessment and risk management processes.

I'll turn it over to my colleague from Environment Canada to speak to enforcement.

Mrs. Cynthia Wright: I think when you say “enforcement”, you mean the application of all of that: the assessment, the regulation, and on-the-ground enforcement.

Mr. Michael Ignatieff: Yes.

Mrs. Cynthia Wright: And that's what the $300 million is about. It's for beefing up the capacity in all those areas. But I think it's a fundamentally different way of doing business from what we have done in the past. It's putting a lot more onus on industry. As Paul said, there will be lists of substances that we think we have enough information on to move forward. It would be up to industry to prove otherwise to us in that sense. So it's a different way of doing business.

Other countries are starting to go this way. Europe is starting to talk about it. They've been talking about it since 2000. To the extent that other countries—big chemical producers like Europe and the United States—start to take action, that will lessen the load on Canada, as well.

The Chair: Ms. Cooper.

Mrs. Kathleen Cooper: I think the capacity has to increase, and obviously the announcement on Friday will increase it. We have to recognize that we're dealing with 50 years' worth of backlog from the 20th century, and that's going to take some time and some work and some resources.

Look at the way pesticides are regulated, and even just the capacity in the Pest Management Regulatory Agency, where there are over 300 scientists dealing with 500 active ingredients, which translates into thousands of end-use products. Compare that with what we have now, a short list of 500 and a slightly longer short list of 4,000, out of a pool of 23,000. It's understandable that there's a need for increase in capacity to deal with this.

The other thing to remember in what has been suggested with this notion of materials use, and what I would really like to support in what Paul just said about a class approach, is that there are two very important efficiency measures to deal with these large numbers.

The notion of materials use is an efficiency measure. Instead of having to go after each product, it's going from the basis of the toxicity and saying, don't use it in a whole lot of products; just use it where you really need it, or not at all.

And then, in classes of chemicals it's to reduce the volume of assessments you need to do. We can increasingly draw conclusions about whole classes of chemicals from what we know about the toxicity of a few of them, when we know that they are chemically and toxicologically similar, even if we don't have all the information about each and every one of them—and we never will.

● (1700)

The Chair: Thank you, Mr. Ignatieff.

Mr. Warawa, and then Mr. Lussier.

Mr. Mark Warawa: Thank you.

Ms. Cooper, I'll be able to ask that question of you now.

There are two things. In your brief, you've said CEPA should be amended "to give the Minister of Health and the Environment the power to recall products from retail and wholesale operations where they violate regulations, or are believed to cause an unreasonable risk." My understanding is that our announcement on Friday includes that. We have bio-monitoring also, which Mr. Glover elaborated on briefly.

My concern is focused on the health of Canadians. I'm one of the many who suffer from allergies, particularly indoor dust. In this job, we spend a lot of time indoors. When you have products breaking down and creating dust indoors, it.... I take shots once a week for allergies, and it's a growing norm, unfortunately. To have good air quality is, I think, an admirable goal.

My question to you is a little bit on PBDEs. You were talking about them and the risk for our health as they break down. Could you comment on that and on our Clean Air Act, which is of course focusing not only on outdoor air quality but also indoor.

Mrs. Kathleen Cooper: When I look at the Clean Air Act and the package of announcements that accompanied it—and I'm going to be responding to the consultation deadline, which I think is December 21—I see a repackaging of a whole lot of things that are already happening. That's my first take on what I saw was there. That is fine; there's some really good stuff happening in Environment Canada and Health Canada specifically dealing with indoor air. But I didn't see it as all that new; I just saw a kind of new packaging of it.

I don't think the Friday announcement included the ability to do product recall, other than the fact that there's a commitment to do it. Is that correct? I can't remember.

Mrs. Cynthia Wright: We have the authority for product recalls.

Mrs. Kathleen Cooper: You mean to create the authority?

Mrs. Cynthia Wright: No, CEPA has the authority, under section 99, to do product recall where a regulation is violated, which would include a regulation that was put in place under an interim order.

Mrs. Kathleen Cooper: Okay. Well, we'll see how that gets used.

Mrs. Cynthia Wright: It enables the minister to require a manufacturer or a retailer to take back a product.

Mrs. Kathleen Cooper: You asked about PBDEs and indoor air quality and dust. I'm not sure what you're asking me, other than to reiterate the concern I had, which is the fact that there's a legacy problem. What we're finding in evidence from bio-monitoring, but also from evaluations of dust, is that many different products with PBDEs are breaking down very slowly, especially if they're exposed foam like this, and they're ending up in house dust. And that's where the exposure is happening. In terms of being a legacy for a long time into the future, part of the risk management of that is not just cutting it off at the source and allowing very toxic substances to be used in that way, but public awareness about the hazards that exist in, for example, house dust. It's a major focus of the work that I do working with prenatal educators and early learning and child care people, etc., so that people know about indoor hazards and therefore how to avoid them, and the small measure of things they can do.

The concern I still have about PBDEs, after all the announcements in the summer that were reiterated on Friday, is that we're going to ban the mixtures that have already been voluntarily withdrawn. We're not going after the deca-PBDEs, which are increasing in use and for which toxicity information is, in my opinion, almost as compelling and increasingly compelling as more evidence is gathered, in comparison to what we know about the ones that have been withdrawn and that we are taking regulatory action on. So it doesn't go far enough. The regulatory action does not go far enough. Again, it says we're taking a class approach, which is a progressive and important way to go, but then it doesn't. It leaves out the most important one, the deca-PBDEs, the use of which is increasing. So I think that needs to be improved.

● (1705)

Mr. Mark Warawa: Okay.

The Chair: Monsieur Lussier.

[*Translation*]

Mr. Marcel Lussier: Currently, many products with considerable consumer appeal, such as flame retardant, stain resistant or wrinkle free clothing, are manufactured in Asia for large retail chain stores. Manufacturers have told me that orders have already been placed by the large chain stores for brand name clothing items made of flame retardant, stain resistant or wrinkle free fabric.

If the government has the right to order a product recall, all clothing currently being manufactured in Asia will need to be recalled because they contain PFOS or PBDEs which will be banned in Canada.

Are manufacturers being asked to withdraw these products from the market immediately, or will they be given a period of time to comply?

[*English*]

Mrs. Kathleen Cooper: I like to try to be reasonable. I think it's a matter of shutting off the tap before you clean up the floor. Stop producing products with what would appear to be highly toxic substances. Once that regulation is in place, then yes, the recall power kicks in after you've decided that you put in place a regulation.

I'm not suggesting to then recall every product. If you use the example of pesticides, this happens when a regulatory decision is made to restrict the use more so than has been the case in the past. The decision means those products that are still on the shelf can still be sold and can still be used, but only up to a certain date, and that's it. It's a way of dealing with the transitional issues that you've identified, without saying recall it all.

Again, it speaks to the issue of risk management including public awareness about longer-term risk. We have all kinds of literature out there in the United States and also in Canada to warn people about the hazards of lead in old paint. It's a legacy issue and something the public needs to know about. When I use the piece of foam example, I describe this as another legacy issue people need to know about, because this will continue to deteriorate.

When I talk about the notion of adding recall powers, I don't mean that you would recall everything that's out there or even what's on the shelf. The regulation would mean a phase-out by a certain date, and beyond that you wouldn't use those products.

[*Translation*]

Mr. Marcel Lussier: Would you care to comment, Ms. Wright? We know that the large chains have orded stain resistant products from factories in Asia. These goods are being manufactured as we speak and will ready to be marketed here in a month or two. Manufacturers have confirmed to me that these items are very popular with consumers and will be very much in demand this spring.

Are these products regulated, in terms of PFOS an PBDEs ?

[*English*]

Mrs. Kathleen Cooper: Can I respond to that? I didn't catch what you were saying initially.

That's a really important point, and overwhelmingly it's an issue of imported products. In the examples I've used, certainly with lead, it's an issue of imports. That's why the concern I've raised is trade trumping health. I think it is a very legitimate concern. I think it's the reason we have not regulated consumer products effectively thus far. It's a significant challenge now, because a regulation on imported products may be construed as an unfair barrier to trade—a non-tariff barrier to trade. We have to come to terms with that. An awful lot of what we're talking about is imported.

In the specific example you give, it depends. If this government actually puts in place something that's going to say these substances are not allowed in products, that issue of a timeline regarding when those imports can happen has to be addressed.

I want to hear their answer.

● (1710)

The Chair: Do you have a quick answer?

Mr. Paul Glover: Are my answers ever really quick? I'll go as fast as I can.

There are three parts I'll cover very quickly.

First, that's why it's important for us to work internationally with other countries to make sure that what we don't like and what we've chosen to regulate in this country we put on international lists for which there is an international agreement not to use those things. There is leverage that Canada uses internationally, not just domestically, to get everybody to move away to safer alternative substitutes.

Second, many of the things we're talking about have health implications. We've talked a lot about the exposure level. We're talking about time for some of these things, because there is time. We don't want to suddenly remove products from the marketplace. We want to make sure that safer alternatives are found. Those PBDEs are estimated to save 300 lives a year. They are still there to allow industry to move to something that is less harmful to the environment and human health so that we never reach the threshold where those health effects are observed. That's a critical point. It's to allow industry that time for transition.

Third, and finally, is information. The portal that's gone up is to provide information to Canadians. That's why we told industry all 4,000 substances. It puts them on notice today that we're eventually going to get to that substance and ask them questions about it. The public can ask them questions, and industry can start to prepare themselves on how and if they're using those things appropriately. It increases the transparency and the incentive to be transparent as we move forward.

The Chair: Thank you.

For our last question, Mr. Steckle.

Mr. Paul Steckle (Huron—Bruce, Lib.): I hope it will be more than one question, though I know time isn't going to permit that.

Mr. Glover has sort of fed into where I'm going. We have sister acts in the United States, and in the case of CEPA we have the Toxic Substances Control Act, which is the sister act that complements what they want to do in terms of the control of pesticides and these various matters we're talking about today.

Coming from the agricultural side, the PMRA is the agency we've looked to as the body, through Health Canada and Agriculture Canada, and because there is so much overlap, we've found it very inefficient. For nine years, basically, we have gone very little distance. We're now making some progress in terms of what we do.

Speaking as someone who is from the agrarian side, because there is this view in the broader society and given that there are people who want to go the organic route, how do we find a blend of people's thinking in terms of what we can and can't use? We have farmers in the United States who are producing fresh fruits and vegetables, apples in particular, who are able to use certain products that we can't use in Canada, yet we bring the product into Canada. There's an argument that can be made here as to how this can be.

Do we at times take product off the shelf that is no longer permitted to be used in Canada? The Americans can still use it, and until we find a new product to complement that, we simply don't have anything to take care of that. It puts our people in a very precarious situation. I think we have to be considerate of those kinds of things.

How can we better deal with that? You know what's happening at Health Canada in terms of the PMRA, the number of products and the number of use permits that have been requested. We don't have the volume of use here. Obviously it's not possible many times to have the companies interested in putting product into Canada, because there just isn't the volume.

● (1715)

Mrs. Kathleen Cooper: I can speak to the Pest Control Products Act and its implementation by the Pest Management Regulatory Agency. It's not necessarily an issue with respect to CEPA.

Certainly I'm aware of the progress that's been made in terms of getting through the backlog of re-evaluation, which is comparable to the backlog we're talking about here, only it's significantly smaller. They have gotten through about 50% of them. At the same time, as you mentioned, there are lower-risk pesticide products available in the United States that aren't necessarily approved for use here. There is an attempt to push that forward.

I don't think it's directly comparable, though, to talk about pesticides coming off the market. In the United States the availability of those lower-risk products and their not being available in Canada is not the same thing as taking the hazardous stuff off the market. The choices to remove the more hazardous pesticides have actually been more frequent in the United States, or it usually happens there first, and we tend to follow suit because of harmonization under NAFTA.

Mr. Paul Steckle: I think Mr. Glover is perhaps more inclined to want to speak to this question, because it affects Health Canada.

Mrs. Kathleen Cooper: Okay.

Mr. Paul Glover: If it pleases the chair, just briefly, with different pieces of legislation, Canada has had different types of experience. Under CEPA, for example, our new substances notification program is viewed around the world as one of the strongest pieces of legislation for dealing with new products. Based on the success we've had with that, we're able to negotiate cooperative agreements for information sharing with other countries through CEPA.

On existing substances, the progress you mentioned earlier has had a lot to do with the Pest Management Regulatory Agency's attempting to reach similar types of reciprocal agreements with other countries to speed up the assessment process.

Finally, any regulatory action that is taken has to be accompanied by what is called a RIA, a regulatory initiative impact assessment, which tries to balance off the initiative, the concerns for the environment, for health, and the economy.

The final point I would make is that the ultimate answer is the government's approach to dealing with sustainable development, something that all departments are attempting to contribute to.

Mr. Paul Steckle: We'd be remiss if we didn't talk just for a moment—and this is directly to CEPA—about salt.

You mentioned earlier, Ms. Cooper, that sometimes trade trumps health and safety. How would you apply that argument to the issue of salt and its toxicity, to those who want to bring salt under the toxic classification? In fact, if we were to remove salt from our society and remove it from the road salt application, how would we be able to justify the health and safety of that product in the same way as we would the other?

I know what the answer is, but here is a product that we have been using for generations, for thousands of years, from the beginning of time. I would hope your indulgence would never cause us to go down the road where we would classify salt as having the same toxicity as we're talking about some of these other products having.

Mrs. Kathleen Cooper: The road salt issue, as I understand it, was the issue of road salt specifically being environmentally toxic. That was the nature of that decision.

But I think Dr. Khatter wants to respond to that.

Dr. Kapil Khatter: Mr. Chair, my understanding is that the assessment was of a mixture. Road salt is actually a mixture of salt and other things, so we're not talking about table salt necessarily.

In order to do that assessment of toxicity, basically you need to schedule it and declare it toxic so that then you can do something about it. What's done after that toxicity assessment can be reasonable and can be appropriate to what road salt is used for.

● (1720)

Mr. Paul Steckle: That would be a pretty difficult one to classify, one type of salt as being toxic and another type of salt as non-toxic, because it comes out of the same hole.

The Chair: Mr. Steckle, I can assure you the committee has listened to the salt people and they've been here and testified—

Mr. Paul Steckle: I haven't been here before.

The Chair: No, I realize that, but certainly we could suggest you look at the transcripts. You'll see that issue was literally part of one entire session.

Are there no more questions?

I'd like to thank our witnesses and to thank the members for being here.

The meeting is adjourned.

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