House of Commons
CANADA

Standing Committee on Environment and Sustainable Development

ENVI • NUMBER 037 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, December 12, 2006

Chair

Mr. Bob Mills

Standing Committee on Environment and Sustainable Development

Tuesday, December 12, 2006

● (0905)

[*English*]

The Chair (Mr. Bob Mills (Red Deer, CPC)): Members, could we come to order, please?

Mr. Godfrey has a motion before you and we do have a great many witnesses here. I believe he has consent to move this to the front of the agenda, but I'm going to set a really severe time limit on everybody and ask you to look at it.

Basically, the motion is that we bring the Auditor General to review her proposal to have the Commissioner of the Environment report three times a year with the Auditor General's report. I know this has been discussed. I would like to have just very brief comments.

Mr. Godfrey, you're on the clock.

Hon. John Godfrey (Don Valley West, Lib.): Very simply, Chairman, we've heard that the Auditor General wishes to change the reporting arrangements for the Commissioner of the Environment, who currently gives us one big report a year, as she did in September. The Auditor General wishes to change that to make it three chapters of the Auditor General's three annual reports. I would just like the Auditor General to come and explain why that's so.

The Chair: Okay.

Mr. Cullen.

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

In terms of timing for Mr. Godfrey's plan, I assume this is in the new year. We wish to express our concerns over these rumours as well. We have a concern with the motion that has been presented.

The Chair: Are there any other comments?

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

The Chair: I'd like to welcome our witnesses today. We have quite a number of you. I would ask you to keep your comments—this is more or less a summary session—as tight as you possibly can. I do have this timer, and normally you do have ten minutes, but we would be grateful if you would possibly reduce that time so that the members have the maximum time to ask you questions.

If everybody can turn their watches on when they start, I'd really appreciate that. We will go in the order that's on your agenda, so we'll start with Shannon Coombs, please.

Ms. Shannon Coombs (Formulated Products Industry Coalition): Good morning, Mr. Chair and members of Parliament.

It's a pleasure to be here today for the wrap-up session of the CEPA review.

As part of our previous presentations to the committee, we have two issues that we wish the committee to include as part of their recommendations in the report to Parliament. Our two key issues would require amendments to the Canadian Environmental Protection Act.

My name is Shannon Coombs and I am the president of the Canadian Consumer Specialty Products Association, a national trade association whose member companies make consumer products such as ant traps, disinfectants, soaps, and detergents. Today I'm here representing FPIC, the Formulated Products Industry Coalition. As stated in our June and September presentations, our unique industry coalition of 15 trade associations was formed in 2001 when the Food and Drugs Act became subject to CEPA.

What do FPIC member companies do? They provide food, personal care products, household cleaners, cosmetics, medical devices, and pharmaceuticals to Canadians. We represent over 750 member companies, and we're a $66-billion-a-year industry, employing 375,000 Canadians. I have provided a list of the associations in our coalition to the clerk in both official languages for your consideration.

As background for our issue—and I'm going to try to capture this as quickly as I can—substances and food in the Food and Drugs Act products are captured under CEPA. Why? In 1999, parliamentarians requested that CEPA be the safety net for all environmental assessments, which includes a health assessment of substances.

In section 81 of the act there is a requirement for other acts that have pre-market assessments to meet or exceed CEPA's environmental assessments. Other acts had two years to meet that requirement, and if they did, they were scheduled for exemption under CEPA. If they did not meet it, then CEPA would be the act to govern environmental assessments, and that's under the new substances notification regulations. Other pre-market pieces of legislation, such as the Seeds Act, the Fertilizers Act, and the Pest Control Products Act, meet CEPA's requirements and were scheduled for exemption. But the Food and Drugs Act did not meet the requirements of CEPA, and therefore environmental substances in Food and Drugs Act products are subject to CEPA's regulations.

We've been working under this regime for the past five years, and we believe CEPA is the most appropriate legislative authority for these substances. Although our member companies have been subject to rigorous pre-market assessments and/or notifications under the Food and Drugs Act, being subject to CEPA was new and challenging. Despite the learning curve, FPIC has recognized that CEPA's systems and regulations provide predictable, rigorous submission reviews to member companies and protection to Canadians and their environment.

So why do we need a change to CEPA and why are we here again today? When the Food and Drugs Act substances were captured under CEPA, it left in limbo a list of approximately 9,000 substances that have been used safely and effectively by Canadians for almost 20 years. These substances are in limbo because they're considered new, not existing under the act, and this needs to be remedied. I'll refer to the 9,000 substances as the “in commerce list”. Substances on this list are such things as pharmaceutical actives, cosmetic ingredients such as extracts, surfactants, food colouring, flavourings, lard, starch, kiwi essence, oil of lemon, etc.

We ask the committee to recommend to Parliament the following: acknowledgement of the in commerce list as a list of existing substances under the law by creating a provision in CEPA to recognize them as such. Why? Existing substances is a practical way to go. The substances and the products have provided and continue to provide benefits to Canadians. They have been in commerce for almost 20 years, and clearly they're not new, but existing.

Since these substances have had pre-market assessment and/or notifications, they need some form of environmental assessment. To ensure this happens, we're suggesting that the government categorize and prioritize the in commerce list, and then if needed, provide screening-level risk assessments, just like the completion of the first phase of the categorization and screening of the domestic substances program.

Key sections of the act for which we're looking for amendments are sections 66, 73, 74, and 81. That was what we tabled to the committee in September as the first place to start with respect to amending the legislation. I have submitted those sections to the clerk.

Another key issue for FPIC, and our second issue for the committee's recommendation, is the use and the meaning of “toxic” in the CEPA legislation. We ask the committee to consider removing the word “toxic” so that there is clarity and understanding with respect to how substances are assessed and managed under the act. If the risk assessment of a substance meets the definition, it's placed on schedule 1 and then some type of management for that particular use will be evoked. As stated in our May submission, the challenge has been around the misunderstanding of the term “toxic”. It's our belief that Canadians, regulators, and non-governmental organizations interpret CEPA toxic substances as being intrinsically toxic.

We have provided some examples. CFCs, which destroy the atmospheric ozone, have been used in the past in asthma inhalers.

● (0910)

Ammonia, which I know the committee has had a great deal of discussion about, is also on schedule 1, and carbon dioxide is on schedule 1. It was put there so that greenhouse gases could be managed, but it's not intrinsically toxic.

To support this issue of misinformation and miscommunication, we have provided two examples to the committee of how the term “toxic” has been misinterpreted. One was from an advocacy group that lists on a website all the substances on schedule 1 as being toxic and not to be used. The first on their list, of course, is ammonia, which they say is used in glass cleaner and should be avoided. The second example is from the B.C. Buildings Corporation Cleaning Management, which cites that all substances that are on schedule 1 should not be in any products.

The CEPA toxic issue is not new. The Canadian Council of Ministers of the Environment, at a previous environment committee, also recognized the issue and asked for change.

Since this review could make this happen, we've requested that the committee again remove the word “toxic” from the legislation. We're suggesting wording that was proposed in the last budget bill, which was Bill C-43, section 15. The change would leave the definition of toxic exactly the same in section 64, but the title of the section would be changed to “assessment and management of substances”. Since Bill C-30 has been tabled, it is our interpretation that the government doesn't need the word “toxic” to regulate, since they're taking regulatory action on the substances under the new definition of air pollutant. So calling section 64 “the assessment and management of substances” accurately reflects what CEPA does.

As well, in our previous testimony we also challenged the committee and the government to provide effective communications around the results of categorization. On Friday, the government delivered a comprehensive program for substance management in Canada. It builds upon the current rigorous science-based regulatory regime. There is a website that's available—chemicalsubstances.gc.ca. We believe this is a really good opportunity for Canadians to review what the government is doing with respect to substance management.

I think all MPs should be pleased with the result of categorization and the next phase. I don't believe the CSDSL, the program, is any part of that effort. It was members of this committee who included the CSDSL requirement in the last review of CEPA. We're now leading the world in how substances are being reviewed and managed. I think that's something we should all take credit for. It's a very good initiative.

Again, for us the challenge is communication. I know that some of the substances that have been talked about have been noted in the newspaper, in the media reports. For example, PFOS has been cited as one of the things that needs to be phased out. It's been targeted as something that's in consumer products—for example, in windshield wiper fluid. PFOS is not in windshield wiper fluid. The government has on their website a very good explanation of what PFOS is in, how they have reduced the use of that, and the amount of PFOS that's actually in Canada. This can be found at chemicalsubstances.gc.ca.

In summary, I'd just like to say that it's been a pleasure working with all of you over the past six months. We believe this process has been a very open and transparent review of a very important piece of legislation. We would ask that you take on our challenges and provide the recommendations to Parliament to amend the legislation. Our collective priority, of course, is to ensure the protection of Canadians and their environment.

Thank you.

● (0915)

The Chair: Thank you, Ms. Coombs.

That was eight minutes and thirty-nine seconds. We will have a prize for the person who goes the shortest. I should have told you that in advance.

Mr. Gordon Lloyd, please.

Mr. Gordon Lloyd (Vice-President, Technical Affairs, Canadian Chemical Producers' Association): Thank you, Mr. Chairman. I'll see if I can beat that, but I would like to know what the prize is.

My thanks for the opportunity to appear before the committee in this wrap-up session. There are four points I'll raise, all of which have been raised in testimony before with you.

On the first point, on December 1, CCPA wrote to Minister Ambrose, and we copied the committee with that letter. In that letter we recommended that there are three critical amendments that are in Bill C-30 that we think should be recommended and made to CEPA now, as part of this committee's review, and not get caught up in the debate that we think is going to be long and protracted and political on Bill C-30.

Those specific amendments related to, first, improving the equivalency provisions in CEPA's section 10, to support working more effectively in partnership with the provinces; secondly, improving section 330 to be able to deal with different air sheds differently, for example, depending on whether or not Canada-wide standards requirements are met in an air shed; and thirdly, improving CEPA's section 46 to allow for independent verification of reporting.

In my notes I've attached specific amendments out of Bill C-30 that we recommended that this committee recommend be made in the CEPA review. I think the benefits of these amendments are that they would provide an improved basis in CEPA to support managing greenhouse gases and air pollutants and would be able to do so probably more quickly than doing this through Bill C-30; that they'd be a step forward in the federal government working more effectively in partnership mode with the provinces, and I think that's important in all areas, not just climate change and air pollutants; that they'd also improve federal flexibility in dealing with different situations in different provinces, which I think is important in our federal-provincial jurisdictional system; and that they'd also improve public confidence in reporting.

My second point relates to virtual elimination. I think in the round table discussion on virtual elimination there was actually general consensus by all parties, even the government representatives who got involved in the discussion, on one point—and I hope that's picked up in the report from the committee—that virtual elimination and its associated requirements for establishing limits of quantification don't really make sense for trace contaminant levels of substances in products. There are other sections in CEPA that can be used to deal with that and that would make more sense to deal with them there, not under virtual elimination.

I think that consensus emerged for a number of reasons, but they included the fact that it's technically difficult to establish LOQs for contaminants in products; the fact that there are other powers in CEPA that could be used to deal with this issue more effectively in section 93; and also that we should try to have better consistency with the Stockholm Convention on POPs.

CCPA suggested specific language to fix that problem in what we tabled at that round table. Again, that language is attached in my notes. Although there was agreement I think by all with the problem and our statement, some felt that our language wasn't the best solution, and that's quite probably true. What we would suggest is that this committee recommend that the government use other provisions in the virtual elimination for contaminants and products and figure out what language their lawyers should recommend to incorporate in the act for that. They might want to use CCPA's suggestion as a starting point, but I imagine they'll be able to do better than we did.

My third point concerns looking for a possible compromise solution on the issue of “toxic” stigma. Industry raised a number of concerns—my association did, as did Shannon, who just outlined a few of them—about the reality of this problem. There were others who raised concerns about the constitutional risks involved in changing the legislation. Our recommendation was at the time, and still is, to remove the “toxic” term from the act, particularly in the operational provisions in part 5, and replace “toxic” with “substance that meets the criteria of section 64”, which is language that government lawyers seem to previously have thought was acceptable in the previous government's budget bill. But we do recognize that there were concerns that this could create some risk to the validity of the legislation.

We still support our original recommendation. We think our stigma concerns are real, and we note that those who thought there were risks did agree with us that, in the end, it was their bottom line also that the legislation would remain valid. But if it isn't acceptable to the committee to change the “toxic” language as we've recommended, then I think something else the committee should recommend in its report is something that I believe there was a lot of consensus around from all parties, and that's for the government to have to provide more context when a substance is listed on schedule 1 as toxic.

● (0920)

Sometimes listing might mean not using the substance at all. If that's the case, it should be clear. Other times, when risk management objectives or toxics are narrower, the scheduling process should also make that clear. The scheduling process, the listing process, should provide some context. There's a big difference between putting something on schedule I to mean, do not use the substance, versus, in other cases, to mean, manage the use of the substance to manage the risk that the risk assessment identifies. That's all jumbled into one and should be sorted out by more context being added.

My fourth and final point is to modernize the act so that, like Australia, Canada is better equipped to recognize positive assessments of other jurisdictions. The committee should recommend adding wording to the act to allow Environment Canada and Health Canada to benefit from assessments conducted by other countries to the degree the department believes appropriate, up to and including full acceptance of the assessment.

One point that I won't mention, but I think should be included in your report, is the point I made in the discussion a week or two ago on tools. We recommended the committee ask government to consider adding some specific clauses to the act that promote considering the use of industry responsibility programs such as Responsible Care, but within an overall regulatory framework. From the discussion with the committee, I think it's pretty clear those recommendations aren't likely to be part of your report.

I think the smart regulation report was right. Despite the fact that these kinds of changes are needed, there doesn't seem to be the political will, and I think that was evident in the discussion here, to go forward with them. I think that lack of endorsement for the approach of supporting industry responsibility programs is disappointing. Supporting them would assist industry to be partners with government when companies show leadership and high performance. I would encourage differentiating between companies that do show high performance and those that don't. Hopefully the discussion will revisit that today, and my conclusion that you're not going to have that in your report will be revisited.

Finally, I think most of the testimony, if not all, stressed that the act needed to be fine-tuned, not fundamentally changed and rewritten, as it was in CEPA 1999. We certainly support that approach, and we think it's particularly important to maintain the strong foundation for the categorization architecture and the ongoing assessments that will be the second phase of that project. We are a world leader in this. It would be wrong to change the foundation that this world leadership was built on and would cause an awful lot of confusion.

Thank you for the opportunity of hearing all of these discussions, and I look forward to a discussion today and to your report.

Did I beat Shannon?

The Chair: Yes, you're at 7 minutes and 47 seconds.

Anne Mitchell, please.

Mrs. Anne Mitchell (Executive Director, Canadian Institute for Environmental Law and Policy): Thank you very much, Mr. Chair and committee members, for inviting us here today.

CIELAP, for those who don't know, is an independent think tank that has been providing advice to the federal government for over 30 years. You have copies of our submission. We have a long history of being involved with the Canadian Environmental Protection Act.

We're going to look at two topics today related to vulnerable populations and ecosystems. They're on the impacts of pharmaceuticals in water and innovative technologies such as biotechnologies and nanotechnology. These happen to be two of the research areas of CIELAP's work right now.

We're going to split this in two, so there's going to be a coming up and down. My colleague, Maureen Carter-Whitney, who is research director at CIELAP, is going to talk about the pharmaceutical issue, and if there's time, I'm going to say a couple of words about biotechnology.

Thank you.

Ms. Maureen Carter-Whitney (Research Director, Canadian Institute for Environmental Law and Policy): Thank you.

The precautionary principle is fundamental to protecting the health of children and other vulnerable populations and vulnerable ecosystems.

CEPA requires the government to make sure that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. It is important that CEPA states the precautionary principle, but it must be made operational in a meaningful way to protect vulnerable populations and ecosystems.

Earlier this year, CIELAP released a report called “There is no 'Away' - Pharmaceuticals, Personal Care Products, and Endocrine-Disrupting Substances: Emerging Contaminants Detected in Water”. Pharmaceuticals and chemicals in personal care products are increasingly being used by both humans and animals. These contaminants find their way into water in four ways: substances used in manufacturing are discharged into waste water; unused medications, cleansers, and personal care products like shampoos are washed away with waste water; drugs are excreted into the waste water stream directly; and discarded or excreted substances are carried in runoff from private septic systems, treatment facilities, and from animal waste and sewage sludge spread on farm fields.

Testing in the U.S. has found emerging contaminants virtually everywhere—in surface water, groundwater, and stream-bed sediments. There's not been as much testing in Canada, but one study of samples near sewage treatment plants in 14 Canadian cities found a number of pharmaceutical products present.

Increased use of antibiotics by humans and as growth promoters in farm animals has led to increased concerns about antimicrobial resistance. And there's also concern that exposure to certain environmental contaminants may interfere with the human endocrine system.

Endocrine-disrupting substances, or EDSs, may increase or decrease hormonal activity that controls many of the body's functions, including growth, development, and reproduction. EDSs are found in pharmaceuticals such as birth control pills, industrial chemicals such as PCBs, metals and plasticizers, fragrances and preservatives in cleaning and personal care products, contaminants such as dioxins, and pesticides such as the insect repellant DEET.

In humans and other large mammals, the health effects of EDSs are not yet well understood, but in fish, birds, and other wildlife, effects have included reproductive impairment, reproductive failure, deformities, and feminization. The incidence of cancers linked to the presence of excess hormones—breast, testicular, and prostate cancers—has recently risen despite the fact that overall cancer rates have been declining. Many more animal studies, along with clinical research and statistical trends and patterns, are needed to establish consensus about the human health impacts of EDSs.

History has shown that the potential hazards from emerging contaminants are not always initially clear. Thalidomide was prescribed as a tranquilizer or a sleeping pill during pregnancy before it was discovered in 1962 that it caused dramatic birth defects in babies, such as missing or truncated limbs. In 1971, a link was established between the synthetic hormone DES, taken during pregnancy to prevent miscarriage, and its effects on female children that included a rare form of cancer, pregnancy complications, and infertility.

These examples teach important lessons related to endocrine disruption and the issue of emerging contaminants. Scientists realized that some effects of these exposures were delayed and would not show up until the fetus was a young adult. Also, some extremely small doses of hormones had devastating impacts. A June 2006 study conducted by Environmental Defence tested seven children and six adults and found 38 chemicals that can cause reproductive disorders and harm the development of children, 38 suspected cancer-causing chemicals, and 23 chemicals that can disrupt the hormone system.

In our submission, we make a number of recommendations. The categorization criteria in subsection 73(1) of CEPA needs to be updated to require that domestic substances list substances be considered inherently toxic and identified for further action if they are known to be carcinogenic and/or known to be capable of reproductive or neuro-developmental toxicity. Once identified, these substances should be targeted for virtual elimination.

CEPA should be amended to require consumer product warning labels notifying the public if a product contains substances that are known to be carcinogenic or toxic to human reproduction and development.

CEPA should include explicit language directing that vulnerable populations be taken into account in identifying substances for assessment and in conducting assessments.

● (0925)

The government should also phase out antibiotics and hormones as growth promoters for farm animals as a precautionary approach to health and ecological concerns such as antimicrobial resistance and EDSs.

This is clearly the time for the Government of Canada to move forward in regulating these emerging contaminants, as the last week has shown. Last Friday the government announced a new chemicals management plan to regulate chemicals harmful to human health and the environment. Proposed measures include establishment of the virtual elimination list under CEPA, addition of the first substances to that list, and development of solutions for the proper disposal of 9,000 chemicals such as pharmaceuticals and personal care products.

Yesterday a letter signed by approximately 700 environmental scientists was released, urging that the current parliamentary review of CEPA be used to better protect Canadians and the environment from the harmful effects of pollution, noting particularly the vulnerability of populations such as children and infants. The letter states that in any scientific field, uncertainty may remain regarding a particular chemical and whether it causes a particular health or environmental effect. However, the available information warrants a precautionary approach in our system for assessing and managing potentially harmful substances. The letter notes that CEPA's regulatory provisions provide the authority to regulate consumer products, but that the government generally does not use CEPA for this purpose. It is time to use CEPA to do this.

● (0930)

Mrs. Anne Mitchell: Do I have a minute?

The Chair: You have three minutes.

Mrs. Anne Mitchell: Thank you very much.

I'm going to talk about biotechnologies. In 1994, CIELAP proposed that CEPA include a separate part on biotechnologies. The government's response was part 6 of CEPA, and part 6 has been, in our view, underused. CEPA is the only federal legislation that provides clear authority for the regulation of biotechnologies, and the government in fact should be using part 6 of CEPA for these new technologies.

Modern biotechnology can involve the transfer of genetic materials between species. This does not occur routinely in nature. The past few years have witnessed the rapid commercialization of agricultural biotechnology in Canada. Modern biotechnology is now moving quickly into new fields. We have GE-fish, animals, and trees. At the same time, there's a growing body of evidence emerging regarding the potentially negative environmental and health impacts of these products. Concerns have been raised about the ability of the current regulatory system to in fact address those issues. Genetically modified organisms used in the open field cannot effectively be contained and pose certain ecological risks and even economic risks for nearby farmers.

CIELAP has been calling for a comprehensive policy framework for biotech since 1985. The elements of such a framework are in our submission. There is an opportunity here for the government to show leadership and to ensure that Environment Canada uses its powers under CEPA to establish a national regulatory regime to address the environmental risks of biotech.

I have a couple of words about others. There is the restriction technologies, or terminator technology. These we feel should be banned in Canada because pollen from terminator plants could contaminate and kill seeds of other nearby plants. Another quickly emerging technology is nanotechnology, manipulating materials at the scale of atoms and molecules. We feel that CEPA should also be used to regulate the development and use of this technology.

Thank you, Mr. Chair, and thank you for your indulgence.

The Chair: Thank you very much.

We'll go on to two individual presentations now.

Mr. Schwarcz, please.

Dr. Joe Schwarcz (McGill University, As an Individual): Thank you. I'll direct your attention to the screen, please. Don't look at me; look there.

I direct McGill University's Office for Science and Society. Our mandate is to inform the public on scientific matters and to demystify these for them, because we like to think that the moment our students leave our gates is not the moment their education stops.

As a university, we have a responsibility to the public to provide information, and I thought it would be interesting to share with you some of the methodologies we use in the context you're interested in, because there is massive confusion out there in the public. I know this because I do a weekly radio show and do public lectures and I'm very closely connected to the pulse of the public.

The public fears all kinds of things. They're told one day to eat as many fish as they can because of the omega-3 fats, and then they find out that they may be contaminated with PCBs. We tell them to eat as many fruits as possible, but then there are concerns about the pesticide residues. Some people then tell them to wash these toxins out of their bodies by drinking lots of water, and then they learn that the water has trihalomethanes in it, so they filter the water with these filter jugs. Then they discover that the plastic is made of polycarbonate, which leaches bisphenol A into the water, and they get all concerned because they've heard that this is an environmental estrogen and may be responsible for precocious puberty in young girls, so they can't even drink the water.

They really start to sweat things, but then they find out they can't even use an antiperspirant because it is contaminated with parabens, which are used as a preservative. If they can't make themselves smell good like that, well, then they think maybe they can use a perfume or a cologne and discover that there are phthalates in there. At this point they really get concerned because they've heard stories that phthalates interfere with the anal-genital distance in rats, and that of course is a concern to everyone.

There is real worry out there. There is virtual panic, especially about the chemicals that are used in everyday life. These days, of course, we have learned a great deal about how these chemicals appear in our blood, but just because something is found in our blood doesn't mean it is necessarily harmful; it just means that the analytical chemists are extremely good at detecting things down to the level of parts per trillion.

Sometimes, of course, there is a need to take action because of links that have been made between these contaminants and health. For example, 1,4-dichlorobenzene is very commonly found in mothballs and in some air fresheners. It turns out that about 95% of the public has detectable traces of these, and we also know that they have been linked to impaired lung function. There may be a reason here to take action, but that's quite different from some of the other issues out there.

An example is phthalates, which of course you have heard a great deal about. These substances are used as plastifiers to soften plastics, particularly PVC. Well, there are a great many phthalates out there. This is not just one compound, it's a family of compounds, and you can't look at them as if they were all identical.

For example, diethylhexyl phthalate has received a lot of adverse publicity, much of it justified, because in this case we do have issues. This is where this anal-genital distance business comes in. It has been shown in test animals. It has been shown in male rats, for example, that the distance is altered. This is because it blocks the synthesis of testosterone, and this effect has been scientifically shown.

What does it mean to us as humans? Well, I think it does mean that we have to be very careful about the kinds of plastics we use with very young children and premature babies, because some of the phthalates may be leaching out into the body. There I think it is a cause for action, and perhaps even in the case of toys, because children put these into their mouths. There may be an issue, but the industry has looked at that and has replaced the DEHP with diisononyl phthalate, a different phthalate that does not have those issues associated with it, and yet the public does not make that kind of distinction, does not realize that these chemicals can be dramatically different.

Also dramatically different is the butyl phthalate used in nail polish or the phthalates used in shower curtains, for example—but again, people start fearing their shower curtains, because they've heard stories about what may happen in rats from DEHP, which is a completely different story.

● (0935)

Dr. Shanna Swan at the University of Rochester has done some human experiments and has discovered in fact that in male babies there is an anal-genital distance difference that depends on how many phthalates there are in the mother's blood. However, it is important to realize that there have been no health consequences noted other than that measurement.

Parabens, another set of chemicals that have been in the news a great deal, are used at a very small concentration as preservatives in a variety of cosmetics products. Again, it's a whole class of molecules, depending on just what kind of substitution pattern we have. But once more, the public doesn't look at it like that; everything is all dumped into one category.

Eyebrows have been raised about this issue, particularly because of the work of Dr. Philippa Darbre at the University of Reading. She measured levels of phthalates in breast cancer tissue, discovered their presence, and linked this to various kinds of products, especially deodorants. The fact is that in this study, which got a lot of publicity, she had no controls at all, so she didn't know whether or not healthy tissue also had parabens—which is very likely, because it's a ubiquitous substance—and she never determined whether there was any connection to antiperspirants. She never even asked her patients if they used antiperspirants.

Furthermore, these particular compounds are far less estrogenic than many others that occur in the environment, including things that are found in soybeans or tofu, so again it has to be looked at in the proper perspective.

As for the parabens we are so concerned about in deodorants, the truth is that very few antiperspirants or deodorants even use these things. They're just not in there. Of course, we need to do testing, absolutely, but we also need to have public education so that people can understand the results of these tests, because if they don't, it leads to all kinds of unnecessary worries and to quackery. Products are sold on the Internet and elsewhere that claim to remove toxins from the body: you just put your feet in there and your toxins are sucked out. People are paying $700 for this, and they have visual evidence, because 30 seconds after putting their feet in there, it turns dark; supposedly the toxins have come out. It is a totally quack device based on an iron electrode that forms iron oxide or rust, but people are buying this for $700 because they're convinced of the toxins in their bodies.

The word “chemical”, of course, should not equate to toxic. Chemicals are not good or bad. They have no morality; it's people who do.

The effects of these things depend on the molecular structure of the specific substance, not on whether it's synthetic or natural. High-dose animal studies do not necessarily reflect human risk, and there are some very good examples of animals reacting very differently. We love chocolate and eat it a great deal, but of course you cannot feed it to dogs, so the dog would not be a good model to test toxicity of chocolate.

Paracelsus told us 500 years ago, “*sola dosis facit venenum*”, meaning “only the dose makes the poison”. That is the fundamental tenet of toxicology. Vitamin A in small doses is very beneficial, but eaten in large doses—as Arctic explorers have done when they consumed the livers of polar bears—it is fatal. Vitamin A: is it good or bad? It all depends on the amount, and so it is with a large variety of substances that you are interested in.

What we really need is data, but it's not enough. We also need to communicate the data and interpret it to the public. Allaying public fears, which I think is one of the responsibilities of the government, has to go hand in hand with legislation like CEPA and the proper communication of what that legislation means to the public. I think the government has done a great thing in moving to evaluate some of the 23,000 consumer products out there, but it's also very important to communicate to the public that the government knows what it is doing—that all of this is being done in a scientific way—so that we can regain the confidence of the public, not only by adhering to CEPA but also by communicating what CEPA is to the public.

Thanks very much for giving me the chance to inform you of our efforts at the McGill Office for Science and Society.

● (0940)

The Chair: Thank you very much, Mr. Schwarcz. I think you probably win the entertainment award this morning. That was very well done.

We'll go on to Ms. Krantzberg.

Dr. Gail Krantzberg (McMaster University, As an Individual): Mr. Chairman, I'd like to state that it's unfair to have to follow such an entertaining person.

Thank you, Chairman and committee members, for this opportunity to testify before you on CEPA. I'll only cover two basic topics. I want to begin my remarks with reference to risk and precaution, and then talk about the Great Lakes perspective.

Robert Constanza said:

> [d]efining sustainability is actually quite easy: a sustainable system is one that survives for some specified (non infinite) time. The problem is that one knows one has a sustainable system only after the fact. Thus, what usually pass for definitions of sustainability are actually predictions of what set of conditions will actually lead to a sustainable system.

Environmental regulations purportedly are designed to ensure that a set of conditions exist to enable ecosystems to be sustainable and protective of public well-being. We use science to predict the outcome of our perturbations on biological, physical, or chemical integrity of the systems, and then regulate on that basis.

The science regarding chemical perturbations has typically been incorporated into risk assessment methodologies to predict outcomes of substances in various environmental media, particularly cancer outcomes. Risk assessment, however, is undependable in protecting living things because it asks whether the possibility of or the risk of damage to the environment and public health is sufficiently large to warrant government intervention.

Risk assessment and risk characterization ask, “How resilient is the environment? How much harm can we bear?” The question of whether harm is sufficiently large to regulate is a matter of ethics, not a matter of science, so portraying risk assessment as a scientific method is not entirely accurate.

For CEPA, the outcome of risk assessment is to manage risk, often by communicating risk rather than acting on the precautionary principle and preventing risk. Further, the inherent complexities and limitations of evaluating chemicals in isolation from one another, in addition to the scientific uncertainty of proving causal relationships between specific chemicals and corresponding health effects, results in a risk management approach that is again undependable.

I'll expand on an alternative or at least complementary approach, that being the precautionary principle as it relates to persistent toxic substances. You've heard of Dr. Schindler, whose recent letter to the Prime Minister makes the case for a precautionary approach. Further, the IJC, the International Joint Commission, in the 1990s, asserted that persistent toxic substances cannot be safely regulated. These chemicals cause disease, death, behavioural abnormalities, cancer, genetic mutations, physiological or reproductive malfunctions, and physical deformities in organisms or offspring, or they can become poisonous after concentrating in the food chain. So, members, I emphasize that cancer is not the only end point of concern, and that cancer is also an end point that takes decades to emerge and its etiology much longer to determine. What does risk assessment do about these other types of health outcomes? Not very much.

The precautionary principle, as defined by the federal government in the CEPA, is

> [a]n internationally recognized principle for action that states where there are threats of serious or irreversible damage, scientific uncertainty shall not be used to postpone cost-effective measures to prevent environmental degradation.

Risk assessment is a dominant environmental decision-making tool in an industrial model of the world. The model favours global economic competitiveness. While this may very well be a defensible model, it makes it plain that risk assessment is therefore not the appropriate tool to protect ecological integrity and public health. It may be useful for predicting cancer, but it's a clumsy, blunt instrument for predicting and circumventing sub-lethal, insidious health effects, or for regulating emerging technologies and processes that also have large spatial and temporal significance.

Finally, most risk assessment and risk management methodologies consider the greater the persistence of a chemical, the greater its potential risk to environment and human health. CEPA needs to consider that some pollutants arise from substances that are in use on a continual basis, like high-production-volume chemicals such as personal care products and pharmaceuticals. These are continually reintroduced into the environment and, as a consequence, the supply continues to be replenished. Therefore, the persistence is virtual, and the notion of persistence needs to be revisited in the act.

● (0945)

My first recommendation to the committee, for Parliament, is for CEPA to actively apply the precautionary principle, critically address the shortcomings of risk assessment and risk management, and learn from other jurisdictions that have taken action to ban substances in the face of uncertainty. A simple example is the banning of certain polybrominated fire retardants by the EU.

Next, I raise the importance of a functional CEPA to the Canada–Ontario Agreement Respecting the Great Lakes Basin Ecosystem and the Great Lakes Water Quality Agreement.

I remind the members that the Canada–Ontario agreement, or COA, is a federal–provincial agreement aimed at enhancing and protecting the Great Lakes basin ecosystem. The agreement outlines how the two governments will cooperate and coordinate efforts regarding Great Lakes basin management. COA was first signed in 1971, in anticipation of the Great Lakes Water Quality Agreement, and there have been seven COAs to present.

Eight federal departments and three provincial ministries signed the most recent COA in 2002, and it expires in 2007. Canada has not signalled to Ontario its decision to extend the agreement, revise the agreement, or renegotiate the agreement. This is a tremendous cause for concern, because within COA is a “harmful pollutants” annex with the goal, stated by the governments of Canada and Ontario, to virtually eliminate harmful pollutants in the Great Lakes. This job has not been done. Chemicals and commerce still threaten the health and integrity of the Great Lakes regime.

The principles of the 2002 COA reflect contemporary agreements and research on environment protection and management that have not been overtly considered. My submission contains those principles. I just want to mention a few: pollution reduction; control at the source; the precautionary principle; prevention; to anticipate and prevent, it being much more economical and cost-effective than to remediate; and public and stakeholder participation.

Will CEPA successfully invoke these principles in light of the current reliance on risk assessment and risk communication? Will COA continue and embody and embolden CEPA? We in the Great Lakes region depend on you to help make this happen.

Also current in the Great Lakes regime is the ongoing government review of the Great Lakes Water Quality Agreement. During this review, many have called out the increasing importance to examine current science, policy, and emerging concepts in ecosystem protection and the protection of human health. CEPA is highly relevant to this review, as it can set Canada's tone for mitigating chemical insults, for which the Great Lakes Water Quality Agreement contains many commitments.

The Great Lakes are situated within a huge watershed and have a large surface area and retention times of years to nearly centuries. The Great Lakes are exquisitely sensitive to persistent toxic substances. I reaffirm a continuing call for special provisions in CEPA to accelerate aggressive action on chemical pollutants in the Great Lakes region, home to one-third of Canadians. The area generates two-thirds of Canada's manufacturing output, for which natural resource protection is essential.

We in the Great Lakes region ask you to urge our government to take this review seriously; to revise or rewrite the Great Lakes Water Quality Agreement to invoke strong, CEPA-based Great Lakes provisions for chemical management; and to push our U.S. colleagues to step up their commitments and implement their Great Lakes regional collaboration. We ask that this be done by providing the minister with the power to designate a region as a significant area, given that the region is particularly environmentally vulnerable to the effects of toxic substances and/or that it generates a particularly large volume of toxic substances into the environment. Following the designation of the Great Lakes region as a significant area, we ask you to urge that the minister be given powers to establish monitoring and research priorities for particular substances and to identify the priorities to move toward the virtual elimination of the inputs of these priority substances.

● (0950)

To summarize, I recommend that the precautionary principle of CEPA not only be upheld but applied vigorously and that risk assessment be tempered by that principle; and that special provisions within CEPA are included to provide the minister power to designate the Great Lakes a significant area, with the purpose of accelerating aggressive action to curb chemical insults in the region and to negotiate stronger Great Lakes commitments with Ontario and the United States.

Thank you.

The Chair: Thank you very much.

We'll now go to Mr. Aaron Freeman.

Mr. Aaron Freeman (Environmental Defence Canada, PollutionWatch): Thank you, Mr. Chair. To both you and members of the committee, I'd like to commend the work that the committee has done on CEPA so far. I think that work has been very comprehensive. I very much appreciate the efforts you've made to ensure that a broad range of perspectives is both heard and considered.

Along with my colleague, Dr. Kapil Khatter, I'd like to touch briefly on some of our key recommendations, gleaning from what some of the other organizations and individuals have said about them. We'll only touch on a few of these recommendations, with a more comprehensive list already having been submitted to the clerk and circulated.

As previously mentioned, in the last couple of days a letter from 721 Canadian scientists was tabled with this committee. That letter, which includes some of Canada's best-known scientific minds, endorses each of the recommendations that Dr. Khatter and I will be talking about.

In addition, I'd like to table with the committee another letter from a group of a dozen Canadian law professors who have examined this issue and supported these recommendations. They also recommend removing the barriers to citizen participation in CEPA. These barriers are so onerous that CEPA's citizen action provisions have never been used in the history of the act. We've provided this letter to the clerk, as well as a summary of each major recommendation, with a list of a very broad cross-section of organizations that support each one.

I'd like to talk about two of the recommendations, my colleague will talk about two more, and then I'd like to address briefly two other issues that have arisen.

The first recommendation I'd like to talk about has already been discussed briefly—that is, establishing significant areas for regions like the Great Lakes. CEPA explicitly recognizes the importance of an ecosystem-based approach, but there are no provisions requiring the government to address vulnerable ecosystems in Canada. The Great Lakes-St. Lawrence basin is where nearly half of the country's toxic air pollution is generated; 58% of the facilities that report to the national pollutant release inventory are located in the Great Lakes-St. Lawrence basin. We recommend that a new part of CEPA should be created to recognize significant areas that are environmentally important because they are large emitters of pollution or because they're particularly threatened by pollution. This part would then be used to recognize the need to address Great Lakes-St. Lawrence basin issues.

The second issue I'd like to address is the authority to regulate consumer products. CEPA has this authority, but the government has generally used the Hazardous Products Act instead. The HPA takes a product-based rather than a substance-based approach that is inadequate for addressing the sources and avenues of toxic chemicals in our environment. The poor track record on regulating lead in consumer products is an excellent example that was discussed yesterday.

CEPA should be the preferred authority to regulate toxic substances in consumer products, with a prohibition on the use of toxic substances in products and controlling their release where outright prohibition is impossible. Exceptions would be made where there are no reasonable alternatives or in cases where the substances would not be considered toxic when used in a consumer product. An obvious example would be carbon dioxide.

It's worth noting that the government's new chemicals management plan recognizes that consumer products are a major source of toxic substances that we should be dealing with in the regulatory system. It's time to ensure that our overarching pollution law is equipped to deal with this.

I should also mention that in addition to the scientists' letter and the law professors' letter, many organizations support this recommendation. These include consumer organizations, such as Option consommateurs, l'Union des consommateurs, the Consumers Council of Canada, services of the Alberta Council on Aging, and others; health organizations, such as the Canadian Cancer Society and the Ontario Public Health Association; as well as many other organizations that are in the document that we've just tabled.

I'd like to pass it on to my colleague, and I'll return to address two other issues.

● (0955)

Dr. Kapil Khatter (Director, Health and Environment, PollutionWatch): Thank you, Mr. Chair.

Let me just fill in to cover three of the recommendations we've brought to the committee. One was touched on, and that is virtual elimination. CEPA recognizes that persistent and bioaccumulative toxic substances need to be virtually eliminated. Only one substance to date has been put on the list. The need to determine a minimum level of quantification is one of the barriers to that problem.

We've been recommending that CEPA needs a definition of virtual elimination that is consistent with the Great Lakes water quality agreement; that virtual elimination should include the cessation of intentional production use, release, export distribution, and import; and that it needs to be revised. We don't necessarily need a precise minimum level of quantification. We support the idea that elimination could be done in other ways, for instance, using the prohibition regulations. But we emphasize that these substances need to be eliminated or prohibited, not just risk managed.

Another issue we've been presenting is the need to change the burden of proof. There is little data from the majority of what we call the "existing substances"—the 23,000 substances that were in commerce up to 1986. In fact, about 10% of them have experimental data. For these substances, the onus is on the government to prove they are harmful—before taking regulatory action. That kind of onus is something we're moving away from. The Pest Control Products Act, for instance, places the onus on manufacturers to demonstrate relative safety before products can be on the market.

What we're looking for is burden of proof language in CEPA that is similar to that of the Pest Control Products Act. There should be a reverse onus, where industry must demonstrate substances and products are safe enough to be used. If there's no data, there should be no market.

Finally, we've also been talking about the need for mandatory timelines. Though parts of the assessment and management process have timelines—relatively loose ones—there are some major gaps. As a result, delays result in years of inaction on substances of concern. The categorization of the domestic substance list that was just completed demonstrates how effective deadlines can be in ensuring that substances are dealt with.

The solution is that CEPA should have mandatory timelines at every stage of the assessment and management to ensure that potentially harmful substances are quickly assessed and action is taken to protect our health and the health of our environment. We have circulated a list of our consolidated recommendations. In there are the details of our proposed timelines.

As Mr. Freeman talked about, these recommendations have been supported by a number of groups. Please look through the submissions and presentations, including the Canadian Cancer Society, the Canadian Association of Physicians for the Environment, the medical officer of health for Toronto, Peel Public Health, and the scientists' letter and lawyers' letter we talked about.

Thank you.

● (1000)

Mr. Aaron Freeman: I'd like to briefly address two other issues outside of our formal recommendations that have been raised by the witnesses.

This committee convened two sessions dealing with the term "toxic" in the act. In one of those sessions, I raised concerns that changing the term "toxic" in any way would very likely attract litigation, which would be a costly distraction to administering the act.

Gérard La Forest is the former Supreme Court Justice who wrote the seminal judgment in this area of law. Following my testimony, Justice La Forest wrote a letter, which was tabled in this committee, stating that he agreed with each of my conclusions. In speaking of my testimony, he stated, and I quote:

> ...you are right in so clearly pointing out the dangers inherent in the proposal in relation to both the international and constitutional issues....

He continued:

> I would respectfully commend it to the committee for its most serious consideration.

Again, removing the word "toxic" may, in Justice La Forest's words, "cause confusion in the federal-provincial arena". In what can only be interpreted as a warning, he noted that "the Supreme Court upheld CEPA by a very narrow majority".

The other issue I would like to finally address is the proposal to review CEPA every ten years instead of every five years. While a five-year review clause is fairly common, it's especially important to revisit CEPA on a shorter timeframe because of rapid developments in our understanding of pollution in our environment. It's also clear that a five-year review is somewhat of a misnomer.

It was eleven years between the original passage of CEPA in 1988 and the "five-year review" that resulted in changes in 1999. Similarly, it's been more than seven years since the last review. It's unlikely that new legislative provisions stemming from this review will be enforced before 2009. Because of the length of time it takes to prepare and administer a review, the practical reality is that we are currently already operating under a ten-year review framework. Changing the five years to ten in the act will mean that this timeline is extended to fifteen years or more.

Thank you very much.

The Chair: Thank you, Mr. Freeman.

We'll go on to Michael Teeter, please.

Mr. Michael Teeter (Consultant, Salt Institute of Canada): Thank you, Chairman.

The Salt Institute has been pleased to be part of this important debate on the review of CEPA. We've attempted to frame our recommendations around a number of public interest themes as follows.

First, CEPA is the cornerstone of Canada's environmental legislative framework and a key component of sustainable development principles, and as such, it should be structured and administered in a way that encourages fast and effective actions to support and improve environmental performance.

Fast and effective environmental improvements require commitment and investment by industry and by governments. CEPA should be structured and administered in a way that encourages effective investments immediately. This means that dialogue and cooperation between and among stakeholders and the government are often critical to success.

In our view, federal regulation is not always the best method to achieve these results, particularly when one understands that federal regulation must flow from schedule 1 listings and is predicated on the Criminal Code constitutional prerogative.

The last framework issue for us is that good science requires independent peer review. Despite what others have said about this, there is no requirement for independent peer review in CEPA.

If the administration and operations of CEPA were structured within this framework, a number of important administrative changes would occur. First, the substance foundation of the statute would have to be modified in theory and practice. Instead of a focus on the substance, there should also be a focus on the human context in which the substance is used.

While categorization, screening, and assessments are taking place, Environment Canada would also be considering such key questions as these.

What are the contexts or behaviours that are creating the environmental problem with respect to the substance?

What is being done now in the interests of improved environmental performance for these substances and contexts, and what actions can we take to accelerate and enhance these positive developments?

What further instruments do we need to achieve improved performance—and when we use the word “instruments”, we mean what kinds of tools does Environment Canada need, whether regulation, whether voluntary instruments, or whatever—and what do we need to do to obtain these instruments? The choice of the instruments will actually often determine the kinds of actions that one would take, because obviously, if voluntary instruments are appropriate or other governments are doing something effective already, then you don't need to go through the regulatory process to achieve those ends, certainly the listing process.

Are there environmental actions that all stakeholders agree on now? If so, how can we accelerate these actions and communicate the benefits of these actions to the public? As we've heard before, there's a great deal of futility in the public and a sense that nothing is being done, when in fact it's not true. So I think the sooner we can communicate the positive things that are actually taking place, the better.

Depending on the substance and the context, the threat of regulation can sometimes be as effective as regulation itself. Use carrot-and-stick principles to get to positive environmental actions sooner. Consider the use of incentives for environmental performance that might drive positive outcomes faster and with wider impact.

A lot of these things that we're talking about here would require a bit of a cultural change in Environment Canada. Rather than simply focusing on us versus them, it would be more a focus of how can we get to things faster by working together, and how can we communicate these benefits more quickly and with more impact? We are also recommending what we consider to be small modifications to CEPA so that we can realize the benefits of the approach we're recommending—and I will summarize from previous presentations as follows.

We're recommending that there be another schedule or listing category in CEPA so that it is possible to differentiate between substances that are “toxic in the ordinary sense”, to use the Supreme Court language, and those that are not. This would allow the government to regulate substances, in context, without confusing the public or damaging trade prospects and international understanding of Canadian products and things like that. This change is entirely consistent with the principles we talked about earlier.

● (1005)

We believe there should be a small change in the definition of substance in section 3 of the statute, so that listing something in context—environments, quantities, and so on—would be much easier. Some people will argue that you don't need to change the statute to achieve this end, but we've heard it from enough expert people in the past that I believe there has to be a small change to the section 3 definition of substance.

If Environment Canada deals with stakeholders in a more contextual framework, we believe there will be positive actions sooner and the reaching of an agreement sooner. We don't believe that stigmatizing consumer products with the word “toxic” should be the subject of the first conversation one has with stakeholders, unless drastic action is necessary under the virtual elimination provisions in the statute.

We also believe that the timelines in CEPA should be changed so that risk management and risk assessment take place concurrently. It's not a big change, but one that I think is consistent with our principles.

As soon as risk management actions are taken, we believe they should be publicized and promoted so that the public understands that meaningful, positive things are being done now. As we heard earlier, I think there's a great deal of misunderstanding, and certainly a perception of futility and a feeling that nobody is doing anything for the environment, so why not just throw up our hands and say, “Why should I do anything?” That's particularly the case with the young people today.

I think the faster we can get to consensus on actions and the faster we can talk about those in a meaningful way to the public, the more they will feel that, “Yes, there are things that people are doing, that our leaders are doing, that industry is doing, and there are things that I can do, too. It's not that futile. It's not that bleak.” Everybody talks about the environment in such bleak terms.

My last recommendation for change in the statute is that there should be a mandatory independent peer review process introduced into the risk assessment part of it. Environment Canada scientists should not be doing the science and managing its oversight at the same time. In our view, there's a conflict of interest. Mandatory independent peer review ensures that good science will drive government decision-making.

Thank you.

● (1010)

The Chair: Thank you very much.

We'll go on to our final presenter, Ms. Tilman.

Ms. Anna Tilman (Chair, Save the Oak Ridges Moraine Coalition): Thank you very much. I appreciate the opportunity to present here. I am presenting on behalf of the Canadian Environmental Network's toxics caucus, of which I am co-chair, as well as the organization, STORM Coalition, in southern Ontario.

What I would like to do in this presentation is reinforce some of the key principles and themes that have come from environmental organizations and others during the review period and to highlight areas where the review has not addressed certain topics and they require further attention.

I will start by saying that the preamble of CEPA is laudable. Many features of the act are commendable, but much of the act has yet to be implemented, to test the waters in many ways, or enforced. These kinds of issues, like implementation...if an act is not implemented, what are the barriers for implementation? What problems have arisen? Why hasn't the act been implemented? Where is the enforcement regimen? We've heard examples that this has not been done.

Some of the witnesses have already stressed some of these key principles, but for the groups I represent, I want to reiterate that implementation of the precautionary principle...we've heard that. One of the hindrances may be, in the clause, the cost-effective constraint, so the committee should consider whether that is a barrier.

Pollution prevention is the cornerstone of CEPA 1999; “it's the priority approach to environmental protection”. However, when it comes to implementing pollution prevention, there's a lot wanting in this, and I will cite specific cases in which I've been involved. One is developing pollution prevention planning for a number of sectors or substances, and to date, after seven years, there have only been eight of these plans. We can't review them yet because they're not implemented yet.

Many of these plans—and I will cite one case for base metal smelters in Canada, which are the largest emitters of CEPA toxic metals. I use the word “toxic” because that's what these metals are when released into the environment, as well as being the prime emitters of sulphur dioxide in Canada. They have limits under these pollution prevention plans that are factors to consider. They're not legally enforceable.

This has taken years to develop. This particular sector has been under scrutiny for 20 years, and what we now have is a plan that may be implemented by 2015. Meanwhile, the pollutants can go unguarded, and there are no limits to metals like mercury, cadmium, lead, and so on. So is that prevention? I would say we need to look at strengthening pollution prevention, if it is to be the cornerstone.

The other area is public participation. I wouldn't be involved if it weren't for public participation clauses under CEPA. However, barriers have been noted in information access. But perhaps for the public, one of the most important tools of public participation has been the national pollutant release inventory, and that is crucial for the public to know what pollutants are being released into their environment and by what medium.

Lately, you've noticed a lack of will to make changes in the inventory. There have been significant changes, but there's been a bit of a downturn, and one questions the will to do this and the pressure that's been put on the inventory to lessen the burden of reporting. It's not the burden of reporting; it's the burden of pollutants on the environment that we have to worry about. Also, I've cited other issues with the inventory that should be examined to make it a more reliable, accessible information tool for the public.

I will go on to the next topic, which Dr. Khatter has dealt with as well, and I agree completely with...the assessment of toxic substances is a critical issue for CEPA. It's the time constraints to do these. Some of these assessments have taken years. Some aspects don't have timelines imposed on them, and as a result, exposure continues. No precautionary principle is invoked in any of these assessments, and vulnerable populations bear the brunt of this. The use of safer alternatives or substitutions is not part of the process, and one has to consider the synergistic effects of multiple exposures to these pollutants.

● (1015)

Definitely the burden of proof and shifting the burden of proof to industry are critical, as is doing it in a way that makes sense. Reference has been made to the scientists' report that illustrates examples of this. Also, the act should be effectively banning or restricting and phasing out the most persistent bioaccumulative toxins.

I want to briefly talk about virtual elimination, and I agree completely with Dr. Khatter's views on this. I've been involved in the one substance that will go on the list, HCBD, hexachlorobutadiene. That substance is the first to enter the list, and if it's not a household name with you, I wouldn't panic, because it hasn't been in the Canadian market in years. If any contender is to make the list, it's the one that would create the least fuss. I consider it like a test case. After all these years, one makes the list, and it's one that isn't a household name or that may be as much of a concern as other substances that are out there.

Similarly, it's the use of this level of quantification that I question as a scientist. It is defined in a way that says it's the lowest concentration that can be accurately measured using sensitive, routinely available technology. Well, for substances, it is set magnitudes above what many devices can now detect, so I think that's a contrived concept. You should investigate it, and I agree with looking at the zero discharge concept and what is met in the Great Lakes Water Quality Agreement. I would strongly recommend that the committee look at the virtual elimination clauses.

Another area is accountability and enforcement. We've heard about a number of these tools, like the polluter-pay principle. How effective are they? They're not used. Is it the will? Is it that the resources to enforce are not there? Are they too discretionary? That's another area.

Another point is federal–provincial processes, and I'd like to cite an example of harmonization and where CEPA should have been used, could have been used, and was not. As you are probably aware, the Canada-wide standards under the Canadian Council of Ministers of the Environment and the harmonization accord were set out to establish or develop standards—they're not standards because they're not legally enforceable—for a number of substances of concern. Quebec, as you know, is not a signatory to the harmonization accord.

I'll cite the fact that Canada-wide standards are not necessarily health-based. They're neither adopted nor consistently monitored in all jurisdictions. The one case I'll cite is mercury. I've been involved in all of these Canada-wide standards, but mercury is the one, and it would probably be the most pervasive bioaccumulative toxin known. Finally, after many years, a "Canada-wide standard" was developed for coal-fired plants. This has just come out; however, it's completely inadequate if you look at the values and comments about this standard. Also, it has cited, for example, zero mercury releases for Ontario, but we know that's not going to happen because Ontario is going to continue with its coal plants. No standards have been set for mercury for coal plants in Ontario. I'm sure you're aware of their continual battle with whether we should close coal plants in Ontario or keep them going. We don't know what we're doing, but that's another issue.

The concern I have about Canada-wide standards is that it has taken so much time to look at some of these substances, particularly something like mercury, as well as dioxins and furans, although mercury has been the longest going here. In all of that time it has taken, and with the arguments not to bring in regulation under CEPA —which many of us strongly supported—we're left with an inoperable document in the Canada-wide standard. If CEPA had regulated in the first place or had looked at regulation, after all these years I would have expected that for a toxin such as mercury, this would have been the way CEPA should have been utilized. It has not been. I contend that the committee should examine this.

Also, the concern I have is the potential for devolution of powers and controls to provinces. The Canada-wide standard is a concern showing that while each province goes and sets up its own implementation mechanism, we seem to lack a federal picture for a number of these substances. They are under CEPA. They are declared toxic under CEPA and they are federal concerns. This is the role, in my opinion, that CEPA must play.

● (1020)

Another issue is international agreements.

The Chair: I would ask you to wrap up. You're over your ten minutes.

Ms. Anna Tilman: I'm sorry.

The Chair: That's fine.

Ms. Anna Tilman: I would say the act itself again may need tuning in some areas. These are the areas you should look at, but there are also areas that haven't been heard from, such as waste and so on.

I'm going to leave it at that. I'll tell you that a further report will be submitted through the Canadian Environmental Network, to help with the report on the review.

Thank you very much.

The Chair: Thank you very much.

Just to let you know, Mr. Lloyd actually was the winner at 7 minutes and 47 seconds. Mr. Teeter was at 7 minutes and 50 seconds.

Three more seconds and you could have been the winner, Mr. Teeter.

We have an offer of a lead key chain for you as a prize, but we will be working on what sort of prize you'll have in the future, Mr. Lloyd.

I would ask the members if we could keep it as tight as we can, so that everybody gets an opportunity. This room is occupied at 11 o'clock, so we will have to end on time.

Mr. Godfrey.

Hon. John Godfrey: Thank you very much. I will be sharing my time with Mr. Scarpaleggia, because I think we're only going to be getting in one round.

My thanks to all the witnesses. It has been a long trip, but I think we're learning lots.

When you're trying to assess, from 30,000 feet, what you've been listening to over many months, it seems to me that CEPA has to be seen as almost the constitutional base for what we do with environmental issues in Canada. It is a fundamental law, and therefore has to be treated as such. But it also is serving a second function, which I hope is not contradictory, of being a bit of a safety net. It has to capture things that were not anticipated.

The third observation that I would make—and if there's any disagreement or elaboration by the witnesses, that's fine—is that it has to be forward-looking precisely because, as Mr. Freeman pointed out, we don't get to review it that often. We know what happens to old pieces of legislation like the Hazardous Products Act. They are not reviewed and are not appropriate to the time. Therefore, we must be forward-looking. We must examine more recent pieces of legislation, such as the Pest Control Products Act and so on to see what we can learn from them. Indeed, we must also look to Europe, to REACH, and so on, so that we're always ahead of the game and not behind the game. Unless there's a wild disagreement with that, I want to get into a couple of questions.

First of all, on the precautionary principle, Gail Krantzberg and many other witnesses have said we have to apply it. Ms. Krantzberg's view was that we should be looking to other jurisdictions.

Gordon Lloyd said Canada should be better equipped to recognize —and I think I'm quoting—"positive assessments of other jurisdictions". I'm assuming that if you look to other jurisdictions, you might also get negative assessments. I'm therefore wondering if there's a contradiction between what Mr. Lloyd is proposing and what the other witnesses are proposing about looking to other jurisdictions for issues and clarification on things like the precautionary principle.

Mr. Lloyd.

● (1025)

Mr. Gordon Lloyd: I'd just like to clarify that on the side of looking at negative assessments in other jurisdictions, we already have that in CEPA. Under section 75, when something is banned—I think "severely restricted" is the terminology—we already look at that and make it a priority for assessing. So we have one side of the coin already, but I'm suggesting that we should also have the other.

The precautionary principle cuts both ways on that. I don't really think that's a difference in either looking at negative assessments or positive assessments.

Hon. John Godfrey: Ms. Krantzberg, while I get you to answer that, could you also answer to Mr. Teeter's observation? He wanted mandatory independent peer-reviewed activity.

Dr. Gail Krantzberg: The point I would make about looking at other jurisdictions is that what is an acceptable level of uncertainty varies among jurisdictions. While we have the same science around the world in regard to, say, some of the polybrominated diphenyl ethers, on action applying precaution in the face of uncertainty, there is a greater willingness to provide action in the face of uncertainty in certain jurisdictions than we have in Canada. That's the point I'm trying to make.

The question that comes to my mind—and I think Mr. Teeter makes a very valid point—in terms of third-party peer review is that the challenge really is how to select an impartial panel of scientists who are both as knowledgeable around the science as the researchers themselves are around the science, and share a broad spectrum of understanding of risk and precaution, so that you have that debate at the table when trying to determine whether to take action.

Hon. John Godfrey: Well, thank you very much.

I gather we're nearing the five-minute mark, so I'll turn it over to Mr. Scarpaleggia.

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

I'm just curious, when did the review of the 23,000 substances in commerce begin?

Mr. Freeman, do you know?

Mr. Aaron Freeman: The categorization exercise began after CEPA 1999 came into force, and there was a statutory deadline for them to complete that process by September 14 of this year, which was achieved.

Mr. Francis Scarpaleggia: That was begun by the previous government. So the next step, then, would logically be what the government is doing today.

Mr. Aaron Freeman: Or on Friday?

Mr. Francis Scarpaleggia: Yes, Friday.

Mr. Aaron Freeman: Well, that was the government's response to the categorization exercise. They took action on a number of the chemicals, but 500 of the chemicals that are in that list have been identified through the categorization process.

Mr. Francis Scarpaleggia: I'm curious, you know, we seem to have this wonderful framework in CEPA, but all of you—and it's an amazing panel, really—suggest improvements to that framework, such as making the precautionary principle operational, bringing in reverse onus, and so on. If these things are not done, will that weaken the effectiveness of what the government announced on Friday? There must be interplay between the two.

Mr. Aaron Freeman: There is an interplay between the two... there is and there isn't. The announcement is a significant step forward in that it takes 200, in particular, of the most harmful substances that have been identified through the process and it puts them on a track toward regulation. That's a very significant step.

The reason I say it's a significant step is that the next step is to ensure that our overall system for regulating potentially harmful substances deals with threats on a systematic basis. Let me give you just a practical example that relates to the chemical management plan.

Under the chemical management plan, for the first batch of chemicals, the government will issue a challenge to industry. Industry has six months to show that the substance is effectively managed, safely managed, and if they can't do that, then six months following that—so starting in January 2008—they will consider putting the substance on schedule 1 or scheduling it for virtual elimination.

That only starts a further process, which under the current situation, under the current act, takes another three and a half years before you actually get to regulations hitting the ground. So we are actually four and a half years away right now from the first batch of substances being actually regulated on the ground, unless the recommendations that we've put forward on mandatory timelines are put in place. These would cut that down to two and a half years.

● (1030)

Mr. Francis Scarpaleggia: But it sounds as if they've already introduced an element of reverse onus in this initial step.

Mr. Aaron Freeman: For this batch of chemicals, yes, they've put in place a version of that principle.

Mr. Francis Scarpaleggia: But there will still be issues around risk assessment, will there not? I mean, they will still have to do some kind of additional risk assessment on those 400, 500, or 200 chemicals?

Mr. Aaron Freeman: I'll clarify. On the first batch of 500, they've done something called significant new applications for 300 of those. So for 300 of them, they've said they're, in effect, no longer in the market. If they want to be reintroduced into the market, they have to go through a separate process that's similar to the new substances regime.

Mr. Francis Scarpaleggia: So 300 chemicals that are the subject of the 500 mentioned in the government's press release are not even in commerce at the moment?

Mr. Aaron Freeman: I don't think it's fair to say that they are not in commerce. Maybe we can get a more technical definition from the officials. My understanding is they are no longer significantly in use in the ways that they were in use when they were first listed.

The Chair: Mr. Lloyd, I think you wanted in there first, and then we'll go to Mr. Moffet.

Mr. Gordon Lloyd: If I could just pick up on this idea of reverse onus, I think you really hit it on the head. There is essentially a reverse onus that operates already under the legislation in the sense that, for new chemicals, companies have to provide information. The government then makes an assessment, and if they want more information, they get it.

The real key issue in comparing this to REACH is, who do you want to make the assessment? In REACH, they're going to have the companies make the assessment. There's some kind foggy evaluation that the government will make later, but that will be a long time later. You don't know when. In Canada, for new substances, the government makes the assessment when they make the decision, and the companies have to provide the information.

We've kind of started to move into that same paradigm with the announcement on Friday. Clearly, for the first 200 or 500 substances that they're going to work on, that is how it's going to operate. They've identified the schedule they're going to assess these on, industry will need to provide what information it thinks it is going to have to provide, and the government will then make the assessment. We're going to get through that schedule of those 500 top priority substances within three years.

REACH, on the other hand, has a list of substances that may be subject to authorization, which basically is similar to, say, our virtual elimination. In an OECD meeting I went to recently, the Europeans noted that they'll probably deal with 20 of these a year. They're going to take much longer than we will to get through the list of substances. The European official I talked to said the length of time this is going to take isn't something they really publicize. But I think we have a much more efficient way of dealing with this in categorization, and we in effect do have what I'm not sure is technically reverse onus, but in effect it has the same purpose. The government will make the decision, and they'll get the information they need from industry to make it.

The Chair: We're going to have go on, Mr. Scarpaleggia.

Mr. Bigras, please.

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Thank you, Mr. Chair. I'm going to share my time with Mr. Lussier.

My question is concerned mainly with the equivalency provisions in section 10 of CEPA and is aimed chiefly at Mr. Lloyd, in light of his brief, and at Mr. Teeter.

What you're actually proposing to us this morning is to amend CEPA so as to integrate the provisions of Bill C-30. Without going into an exhaustive comparative analysis, I'd like you to tell us what the implications would be of amending section 10 of CEPA by integrating the principles of Bill C-30. What improvements would your proposal bring about?

● (1035)

[*English*]

Mr. Gordon Lloyd: Bill C-30 has a very simple amendment to section 10. It basically says that instead of a province having to have the same regulation as the federal government, it has to do something that has the same effect. So certificates of approval or permitting that provinces use could be then recognized, which would make the provision much more effective. There's also an amendment that adjusts the timelines of how long an equivalency agreement would last.

That's a very simple amendment. There are two other even simpler amendments that I pointed to about reporting and dealing with flexibility in provincial regimes and recognizing those and being able to treat provinces differently, depending on, say, whether they're meeting Canada-wide standards. That's probably, in total, about one page of the vast amendments that are in Bill C-30. I think this committee could pick those three amendments out.

I remember when the minister was before this committee, Mr. Godfrey asked her if there were any areas specifically in CEPA that needed strengthening that she could point out and then you as a committee would work on them. I think those are the three elements in Bill C-30 that fit that description, that would be really good to have this committee work on in terms of their being good things for the environment and not have them caught up in what I think is going to become the political football in the discussion of Bill C-30. So I hope that answers the question.

[*Translation*]

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

I'd like to come back to the matter of the Great Lakes. My question is for Dr. Krantzberg in particular.

In your report, you say that the Great Lakes should be designated a "significant area," so as to curb chemical insults. I think that in Quebec numerous lakes have suffered chemical insults from the presence of what is called blue-green algae. We've had a proliferation of zebra mussels, but should we also be afraid of toxins from blue-green algae in the Great Lakes?

[*English*]

Dr. Gail Krantzberg: Thank you.

I mentioned calling for the designation of the Great Lakes as a special region in the context of CEPA because there is a large population and large industrial density there in terms of the scale of generation of chemicals, plus a long residence time delay that keeps the chemicals there.

To answer your question about blue-green algae blooms in the Great Lakes region, in fact, we are seeing a resurgence of them. I don't think those toxins are addressed under CEPA. They're naturally produced toxins. It's complicated, but they are a consequence of increased nutrient loadings to the lakes, zebra mussel filtration, and changes in the ecosystem dynamics.

Yes, we are seeing those types of toxins, particularly in the near-shore waters, causing taste and odour problems in the drinking water of the Great Lakes. I can't comment on whether that's a matter that CEPA could address, because it really is one of nutrient control.

[*Translation*]

Mr. Marcel Lussier: I return to the same question.

You said that a toxin is not toxic. I'd like to know what Environment Canada is going to do if a large quantity of blue-green algae develops in the Great Lakes and the Lakes are declared to be contaminated by the toxins. From what you've just told us, Ms. Krantzberg, the Canadian Environmental Protection Act does not deal with these toxins.

[*English*]

Mr. John Moffet (Acting Director General, Systems and Priorities, Department of the Environment): There are a couple of points I would mention about the act and authorities in the act.

First of all, the act does have a separate set of provisions regarding nutrients, so the act provides the federal government with the ability to regulate sources of nutrients. There are, I believe, some very old regulations on the books regarding certain products that contain nutrients. The act could be used again in the future to regulate other sources of nutrients.

In terms of other substances that have been designated as toxic, there are a number of substances that have been found in the Great Lakes, which are currently regulated under CEPA. There is full authority under CEPA to regulate any other sources of those toxic substances.

The final point I would add is that there is in CEPA, in subsection 330(3), I believe, the section to which Mr. Lloyd referred at the beginning of his testimony, the authority to develop regulations that apply differently to different regions in Canada. There has to be a clear health or environmental justification for such differentiation.

For example, if there is a particular air quality problem or a particular water quality problem, whereas the problem itself is national and therefore requires national intervention, it may be particularly severe in one region. Under the law, the government could develop a regulation to establish a specific standard for that region that is different from the standard that applies to other regions in Canada.

Clearly, I'm not here to comment on how the law has been applied in the past, but I wanted to explain to you the various authorities that exist within the law and how it could be used.

● (1040)

[*Translation*]

Mr. Marcel Lussier: Mr. Moffet, you used the word "toxic" but not the word "toxin" in your presentation. That's what worries me. If a lake or the Great Lakes are contaminated by toxins produced by blue-green algae, can you intervene? No section of the Act stipulates that you can intervene and prohibit the drinking and use of water. Are these matters the responsibility of Health Canada?

[*English*]

Mr. Steve Clarkson (Director, Bureau of Risk and Impact Assessment, Department of Health): Mr. Moffet described how we could deal, under CEPA, with the fact that the toxins are growing in the water by trying to remove the nutrients—

[*Translation*]

Mr. Marcel Lussier: If the toxins are present in the lake and the lake's water is declared unfit for drinking, what do we do? Is there a legislative vacuum here?

[*English*]

Mr. John Moffet: I think your observation is correct. I don't believe the act provides authority to the government to remediate problems that have arisen. There are certain emergency provisions.

[*Translation*]

Mr. Marcel Lussier: Are the drinking of water and the health risks associated with it matters of provincial jurisdiction?

Mr. Steve Clarkson: Yes.

[*English*]

The Chair: Ms. Krantzberg.

Dr. Gail Krantzberg: The instrument you have that you could use in this case may not be a CEPA instrument, but it may be implementation of the Great Lakes Water Quality Agreement and the Canada-Ontario agreement protecting the Great Lakes basin and St. Lawrence region.

The Chair: Thank you very much.

Mr. Cullen.

Mr. Nathan Cullen: This is an interesting line of questioning. But I want to return to a point you made earlier, Mr. Freeman, about the recent announcement, because we have this convergence of efforts around CEPA at the same time as this committee has been doing its review.

You mentioned the 300 chemicals that were listed on Friday. Can you just expand a bit on your answer to Mr. Scarpaleggia about the incidence of these chemicals and how profound their use is in Canada?

Mr. Aaron Freeman: I can go through a couple of the chemicals that are on the list. I should clarify that 300 were what's called CNAP, or certificate of new application process, where they've essentially said these aren't in the market at relevant levels. If you want to reintroduce them into the market, you have to go through the new substances regime.

They've issued the challenge to industry to show that 200 of these chemicals are safely managed. One of those chemicals is bisphenol A. This is the number 7 recycling symbol on hard plastic containers. Just last week there was a study linking this chemical to breast cancer. There are a number of studies that link it to cancer.

● (1045)

Mr. Nathan Cullen: I guess where my questioning is leading is just to understand that when numbers are brought forward, there's a propensity in government to want to overextend the significance of any announcement. There was some action that the law required, and that happened.

There are certain chemicals that, while significant in their danger, are not significant in their presence within society. They just aren't in common usage. They existed 20 years ago, or they're in very small amounts. I see Ms. Tilman is nodding and Mr. Lloyd as well. I don't want to delve too much into Friday's announcement because we're still digesting it.

On your quotes around Mr. Laforest and the question of toxic, can you remind the committee again who he is?

Mr. Aaron Freeman: He's a former Supreme Court justice. He wrote the Hydro-Québec decision on behalf of the Supreme Court in 1996. That is pretty much the seminal case on CEPA at the Supreme Court level in Canada.

Mr. Nathan Cullen: On the portions you quoted, they're always couched in judge's language, and certain words have implications. But there certainly seems to be some strong indication of caution and wariness over the danger of altering the word “toxic” and reopening the act to some potential challenges. I'm not sure if Ms. Mitchell—or who—can comment on that from CIELAP.

Is that fair to say? For the average person listening, the language you quoted might sound rather bland.

Mr. Aaron Freeman: For a former Supreme Court justice, the language was quite strong. I think he was quite clear that there is a significant danger that this would attract litigation. He noted that the court was deeply divided on the case, and there are serious international and interprovincial concerns about doing anything to the term “toxic”—certainly removing it or weakening it in any way.

Mr. Nathan Cullen: I want to turn our attention to the topic of citizens' participation. Both you and Ms. Tilman brought up that a lot of these chemicals are extremely complex—the processes used in manufacturing.

Ms. Tilman, you have been through the process and are still engaged in it. What specific things need to change? Are there funding issues? Is it a translation question?

Ms. Anna Tilman: In terms of public participation with regard to assessment and developing the instrument by which to proceed, I think sometimes the public gets involved a little too late, after the fact. It's good to be involved right at the beginning of the process, starting in. A lot of learning has to be done, and a lot of assistance given, but again, as a public representative, it seems to me that the resources, or the will to act in certain ways, are not there.

You have to look at a whole set of instruments. First, what kind of instrument will you use—a regulatory instrument, a pollution prevention instrument, an equivalency agreement? What kind of instrument is appropriate? That decision has to be looked at first.

For some of the substances, it's not too clear whether, when the decision is made, it's political or resource-dependent. In many of these instances in which a number of us felt that regulatory action was definitely necessary—I've alluded to the case of base metal smelters—this was not the one that was pursued, although it may happen later on.

What is happening is that these consultations are going on, and it's important that we are there for this. But somehow the follow-through isn't there, or a decision already seems to be made that this instrument will go. So I'm not sure—

Mr. Nathan Cullen: The consultation becomes somewhat more symbolic.

Ms. Anna Tilman: Well, I hope it's more than that. We do have a chance to respond, but we don't know what effect that really has and how well that brings it in.

Mr. Nathan Cullen: Perhaps you can respond to this later, on paper. But before I turn to Mr. Freeman, I'd like to ask you this. We are going to be making recommendations to the government on the act. Are there things we can build in that would strengthen the force and the will of citizens' participation in this and not leave it entirely to government or industry alone?

Ms. Anna Tilman: Yes, there are. I think you'll be getting some submissions on this to help you in the review.

Mr. Nathan Cullen: Okay.

Mr. Freeman.

Mr. Aaron Freeman: If you look at our detailed recommendations, which have already been circulated, there are two areas in which I think citizen participation could be significantly improved in CEPA. One is the citizen action provisions. This allows private citizens to enforce certain provisions of the act.

These have limitations that are so onerous they've never been used. They can only be initiated if the minister has failed to conduct an investigation and report within a reasonable time. They can only be employed where significant harm to the environment has already occurred.

● (1050)

Mr. Nathan Cullen: Which is kind of the point.

Mr. Aaron Freeman: Exactly.

Mr. Nathan Cullen: I have a question for Mr. Lloyd in connection to this.

Ms. Tilman commented that only eight pollution prevention planning audits or processes have been done, with none of them implemented. I am referring back to your comments on the leadership role Canada has taken and the certain assuredness Canadians should feel about how we're doing. There has been much testimony and confusion over this.

As a general commentary, a lot of committee members have heard that it's relatively okay, that some pieces need changing. Some of the bottleneck happens around the will—the will within the bureaucracy, the will to implement.

When you hear testimony like that, is that not cause for concern? Only eight done, none implemented, none for new levels of mercury, smelters in Ontario—it all seems problematic somehow.

Mr. Gordon Lloyd: That's very similar I think to the comment and recommendation I made that, as the smart regulation report said, there needs to be more emphasis on using a broader range of instruments. I would count pollution prevention planning as being part of that, just as I would industry responsibility programs like Responsible Care.

Mr. Nathan Cullen: But it hasn't been used.

Mr. Gordon Lloyd: I agree. That's why one of the recommendations we've made in this wrap-up summary, which I hope the committee will look at, is whether there could be some language put into the legislation that would encourage the government, no matter who's in power, to look at the broad range of instruments and not just focus on regulations per se. I think that has slowed down the process. They should have looked more broadly at pollution prevention planning.

That's something I have said here before, in testimony, that it's unfortunate we don't use that tool more. I think it ties nicely into industry responsibility programs like Responsible Care.

As the smart regulation report says, officials seem to turn to regulation more easily. My testimony—when you were at Mrs. Broadbent's funeral—got into this a bit. There's this false dichotomy of regulation or voluntary. There's a lot of stuff in the middle, which I would put pollution prevention planning into—

The Chair: Mr. Cullen, I believe Ms. Tilman wants in.

Make it very brief, please.

Ms. Anna Tilman: I'll be very brief. You may want to look at the confidentiality provisions under CEPA. Even once the plans themselves come through, it's only ministerial discretion, sometimes, that receives the plans...or the lack of them. So please look at confidentiality.

The Chair: Thank you, Mr. Cullen.

We'll go to Mr. Warawa.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chair. I will be sharing my time with Mr. Vellacott.

First of all, I would like to sincerely thank the witnesses for being here as we wrap up the CEPA. Many of you have been here before.

CEPA 1999 has a legislative requirement to be reviewed every five years. The previous government had a responsibility to do that review, and unfortunately, it didn't happen. It was a high priority for our government. So thank you for helping to make this happen. It could have been done a little bit sooner, but unfortunately, the Liberal Party and the Bloc tried to shelve the CEPA review; they voted against continuing. Yet we're able to complete this. So we're very happy. The health of Canadians and the health of our environment is very important.

We've also been able to look at, as many of you made comment on, our chemical management plan and our Clean Air Act, to try to clean the environment and deal with issues that will protect the health of the environment and the health of Canadians. We've heard from a number of different groups—parents with autistic children, the growing problem of juvenile diabetes, AIDS, and cancer—all concerned about the causes of these increasing health problems in Canada. It's another reason why our chemical management plan has been announced and is very important.

I do have some questions. My first question is regarding information. Industry has shared a concern about making that information public, whereas, on the other hand, the public would like that information so they know what is harmful and what is not for the health of Canadians. Could I have some comments on that, and with the limited time that I have, could you make your comments short? Should that information be made public, or should it be protected to protect industry?

I would particularly like to hear again from Professor Schwarcz. I found your comments very interesting. Your PowerPoint was very interesting. There are fears of the unknown, but also there are some genuine things that the government needs to do to take leadership, which I believe we are doing. So could you make some comments on the practical aspects of what we need to do?

● (1055)

Dr. Joe Schwarcz: You're absolutely right, communicating to the public is extremely challenging. I think it is a specialty within science. The same way that you have specialties in medicine or in chemistry, there's a specialty in science communication. It's not easy to make things apparent to the public, since they are not white or black issues. There are many shades of grey. That's one of the things I tried to point out. Even when you look at one specific class of chemicals, within that class there are dramatic differences. There are differences in the application and in what the compounds can do in the amounts that are used. It's the molecular structure that really determines what is going on.

I think as CEPA is implemented, one of the features has to be to communicate to the public just what this is all about. It takes a lot of thought to know just what kind of language to use in order to give the appropriate level of comfort to the public. It has to be such that you communicate to the public that things are being done. But no matter what, there are inherent risks. We do not live in a world in which you can ever guarantee that things are risk free. There's a certain level of risk that has to be accepted because it is part of our lifestyle. It's a question of risk versus benefit.

It's very easy to talk about the precautionary principle. It's motherhood and apple pie. How do you communicate to the public what this precautionary principle really is? How can you have a degree of satisfaction that the public will accept? You can tell industry to prove that something is safe. How do you do this? How can you prove that something is safe? You cannot prove a negative in science, unfortunately. You can't prove that something cannot happen. I could not prove to you that reindeer cannot fly, right? I think most people would agree that they can't, but I couldn't prove that to you.

The Chair: I want to give Mr. Vellacott a chance here.

Dr. Joe Schwarcz: The message is that it's going to take a lot of effort to communicate to the public what the act really means and what the level of risk is.

I'd be very happy to give further comments and advice on how that can be done, practically, but I can't do it in one minute.

Mr. Mark Warawa: I think I can talk to the other witnesses individually.

I'm sorry, my time is up.

Mr. Maurice Vellacott (Saskatoon—Wanuskewin, CPC): I want to direct the first question to Mr. Teeter. You mentioned this matter of risk management and risk assessment taking place at the same time, if I understood correctly. Normally you would do risk assessment first, I would have thought, and then the risk management. What do you mean when you say "both at the same time"?

I have a few other questions that I want to move to as well.

Mr. Michael Teeter: The structure of the act is such that it requires risk assessment first, before actions are taken. There is a conclusion of harm, or toxicity in this case, under the section 64 definition of "toxic substances".

What I'm recommending—and you might be able to do this simply with an attitudinal change in Environment Canada—is that as the substance is being assessed, you also ask what is happening with risk management. What is happening out there in the real world, not in Ottawa but in the real world, to manage how this substance is actually being used in the environment? You might be surprised with the answers you get. If the answers tell you there are actually some positive environmental actions taking place now, you start working with the stakeholders on those at the same time as you're assessing. It seems to me to be common sense. The resources would then be deployed in a way that quickly stimulates positive environmental actions.

● (1100)

The Chair: Mr. Khatter and Mr. Moffet, very, very briefly please.

Mr. Maurice Vellacott: Yes, because I have other questions I want to go to.

Dr. Kapil Khatter: I'd just say that I think what Mr. Teeter is saying about an attitude change is already happening. With the new announcement, the departments have shown the commitment to look at the risk management while they're looking at the risk assessment. That will allow them to meet the kinds of timelines we have proposed.

Mr. John Moffet: That's exactly my point. Great.

The Chair: Mr. Vellacott.

Mr. Maurice Vellacott: I guess this is probably directed to Mr. Moffet and Mr. Clarkson.

I think I know part of the answer, but you can fill me in on the other parts. Is the regulatory process with respect to CEPA more onerous than some of the other federal acts? I understand there are a few more steps in the process that slow down the coming into force of a regulation. Is there a more onerous, difficult process, through CEPA in particular?

Mr. John Moffet: The process to develop a regulation under CEPA is no different from the process to develop any other regulation in the federal government.

Mr. Maurice Vellacott: Are there more checks and balances?

Mr. John Moffet: The checks and balances that CEPA establishes are more before a regulation is developed. Those have to do with the process to identify a substance as "toxic". When passed, that establishes a threshold that allows the government to develop various instruments, including regulations. Once the government decides to develop a regulation, it follows the same process, with the same transparency hurdles, under CEPA, as is imposed on the development of any other regulation.

Mr. Maurice Vellacott: Let me put it this way then. Is the entire regulatory process the same average timeline as it would be with other departments? You either get 30 months—

Mr. John Moffet: I want to be clear. When you say "timelines", there are statutory timelines. Those have to do with the requirements to do pre-publication, which is typically 60 days. Those are fairly standard within the federal government. I would not want you to walk away thinking that this is the time it actually takes to develop a regulation. We typically go well beyond that.

The Chair: Mr. Vellacott, I'm sorry, your time is up and we are being displaced.

I want to thank all our witnesses for being here.

Certainly Ms. Coombs and Dr. Khatter win the award for best attendance by witnesses.

Thank you very much.

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
