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Chair

Mrs. Deborah Schulte

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● (1100)

[*English*]

The Chair (Mrs. Deborah Schulte (King—Vaughan, Lib.)): If I could, I'd like to convene the committee.

An hon. member: Where are all our members?

The Chair: I think everybody is working their way over, and we'll see what we can do.

We'll go with whom we have today, and I think some may be joining us later.

I just wanted to confirm that we're stopping our assessment of protected areas, and later today we are going to be looking at a potential trip so that we can further enhance our knowledge of the different models that are out there and the challenges that are facing us in protected spaces. But today, we're back to the subject of CEPA. We've been away from it for a little while, so we'll have to get our heads back around the subject matter. Hopefully, everybody read the briefs.

We have some excellent witnesses with us today. I'd like to welcome Shannon Coombs, from the Canadian Consumer Specialty Products Association. We have Darren Praznik and Beta Montemayor, from the Canadian Cosmetic, Toiletry and Fragrance Association. Thank you for joining us today. And via video conference, we have Joseph Castrilli and Fe de Leon, from the Canadian Environmental Law Association.

We welcome everyone today.

We're going to have the three witness statements of 10 minutes each. We will then move to two rounds of questioning. We have about 50 minutes of questioning. Then we're going to move into committee business because we need a little work done for the trip we're trying to organize.

Let's get started with our witnesses by video conference, because we often have a bit of a challenge with that video conferencing, so we'd like to have your witness statements first. Please, would you proceed then, Joseph or Fe de Leon, either one. Thank you.

Mr. Joseph Castrilli (Counsel, Canadian Environmental Law Association): Thank you, Madam Chair, for inviting us to appear before the committee this morning on the subject of the Canadian Environmental Protection Act.

We provided the committee with three documents, and we'll be happy to answer any questions regarding any of them during the course of the proceedings this morning.

Let me begin with some overarching principles.

Given the dramatic increases in the release of toxic substances into the environment that we set out in our material, members of the standing committee must decide whether CEPA is meeting the interests of the Canadian public in protecting human health and the environment from toxic substances.

If you conclude that the act bears significant responsibility for failing to stem the ever-increasing levels of releases of toxic substances, including cancer-causing and related agents, then CELA recommends that at least the following principles should be considered by the standing committee.

First, impose mandatory obligations on the government and reduce government discretion in the three key areas of the statute that address toxic substances, parts 3 ,4, and 5 of the act respecting information gathering, pollution prevention, and control of substances. Second, accentuate the role of the public at every stage of the process, from access to information, to notice and comment, to reviews and appeals, and to enforcement. Third, establish that the burden of proof rests with industry to establish the safety of existing and new chemicals. Fourth, establish as a fundamental principle that government must require examination of alternatives and substitution of safer substances as an integral part of that decision-making process, where appropriate.

There are a number of components of the statute that I want to speak to this morning. I'm going to begin with information gathering.

The national pollutant release inventory has been instrumental in providing the government and the Canadian public with basic information about releases of substances that may pose problems to the environment and human health. However, there have been key problems with the program, some of which were mentioned before the committee in March. I'm briefly going to provide a short list this morning.

First, the NPRI exempts certain activities from reporting requirements.

Second, the NPRI regime predominantly requires the reporting of releases and not the uses of substances. This particular limitation caused the Ontario legislature to enact its own law, the Toxics Reduction Act in 2009, specifically addressing reporting on and reducing the use and creation of toxic substances.

Why did Ontario do that? In my respectful submission, it's because Ontario is one of the highest emitters of toxic substances in North America and the number one discharger in Canada, as found by the government itself in 2008.

Third, the NPRI threshold reporting levels are still too high. As you know, there are 10,000 tonnes per year for any particular substance, depending on the substance. That particular limitation caused the City of Toronto to promulgate its own bylaw in 2010 requiring businesses to report annually to the city medical officer of health on the release and related activities of approximately 25 priority substances above thresholds of 100 kilograms per year—not 10,000 tonnes per year.

Let me speak briefly about pollution prevention.

The minister's authority under the act to require persons on notice to prepare and implement a pollution prevention plan has been used too infrequently and in relation to far too narrow a number of industrial sectors or companies to constitute a systematic response to the problem of increasing releases of toxic substances. This also contributed to Ontario's decision to enact its own toxics reduction law in 2009.

I should also note that the pollution prevention approach in CEPA has generally focused on pollution control or abatement of releases rather than true pollution prevention, which is defined as material or feedstock substitution of safer chemicals, product redesign or reformulation, and changes to manufacturing processes.

I'm going to speak briefly about assessment and control. With respect to this issue, the scientific assessment process for determining that a substance is toxic has been viewed by some as the true Achilles heel of CEPA, as it has led to just 132 substances, or groups of substances, being listed in schedule 1 over the last quarter century.

I'm going to focus on three areas of concern with respect to this issue: existing substances, new substances, and virtual elimination authority.

● (1105)

With respect to existing substances, the categorization and, later, the CMP process for examining existing substances, although important in providing improvements over what we had previously, have developed their own problems at the assessment and regulatory control stages.

These include the following: first, health effects assessments during categorization did not explicitly require consideration of endocrine toxicity or neurotoxicity; second, categorization largely relied on existing data; third, the CEPA process applied very stringent criteria for determining whether substances were persistent, bioaccumulative, or toxic, and if CEPA had applied criteria from other jurisdictions, more chemicals would have been considered for assessment under CEPA; and, fourth, the risk management options for chemicals deemed toxic under the CMP process and placed in schedule 1 generally have not focused on phasing out or eliminating such substances or using safer alternatives.

Briefly, with respect to new substances, I'll make just two points. First, data required under the act and regulations are not sufficient to the task of evaluating new substances, and we set this out in detail in our PowerPoint presentation. Second, there is a lack of adequate authority under the act with respect to the role of the public in consideration of new substances.

Finally, with respect to virtual elimination, there's only one substance on the virtual elimination list. That's one substance in the last 16 or so years. The act's definition of “virtual elimination” focuses on minimizing release rather than eliminating the production and use of toxic substances. As a result, it has simply become another pollution control measure, rather than an instrument of pollution prevention, which was its original purpose.

In summary, there is a need for reforms to the information-gathering, pollution prevention, and risk assessment and risk management processes under CEPA. We list some of them in our conclusions and recommendations, and also in our PowerPoint presentation. We would submit that revisions to key principles and provisions of the act are warranted if the objective of reducing and eliminating toxic substances in Canada is to be achieved.

As this committee knows, these and many reforms were recommended many years ago by this particular committee, your Senate counterpart, and also by members of the public, but no action in terms of amending the statute has occurred to date. Doing so at this time would serve as a true law reform model domestically and also beyond Canada's borders.

I'd be happy to answer any questions at the appropriate time. Thank you.

● (1110)

The Chair: Thank you so much.

We will get on to questions, but we're going to hear from all the witnesses first. I appreciation your deputation.

If we can have Shannon Coombs up next, that would be great. Thank you.

Ms. Shannon Coombs (President, Canadian Consumer Specialty Products Association): Good morning, members of Parliament. It's a pleasure to be here today to provide our perspective on the committee's review of the Canadian Environmental Protection Act.

My name is Shannon Coombs. I am the president of the Canadian Consumer Speciality Products Association. For 18 years, I have proudly represented the many accomplishments of this proactive and responsible industry.

Today I've provided a one-pager, “Imagine Life Without Us”, which illustrates the type of products the CCSPA represents. I'm sure that many of you have used them today.

We're a national trade association representing 35 member companies across Canada and, collectively, a $20-billion industry directly employing 12,000 people in over 87 facilities. Our companies process, package, and distribute consumer and industrial and institutional specialty products, such as soaps and detergents, domestic pest control products—

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Excuse me. You said there was a one-pager?

The Chair: I'm sorry, just a second. Hold on. We've stopped the clock.

You emailed a one-pager today, but you sent it to the clerk, so we don't have it in front of us. It will eventually come to the committee.

Mr. Mike Bossio: Okay.

Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.): So stop looking is what you're saying?

The Chair: Yes.

Voices: Oh, oh!

Ms. Shannon Coombs: Imagine under your kitchen sink—

The Chair: We will get it. Just assume that we don't have it in front of us right now, and we'll get it, okay? Thank you.

Ms. Shannon Coombs: Thank you very much.

We represent soaps and detergents, domestic pest control products, aerosols, hard surface disinfectants, deodorizers, and automotive chemicals—as I call it, everything under the kitchen sink or in your garage. We are the downstream users of chemicals, as our products are generally based on the chemistry developed by the upstream companies who were represented here at your last meeting on CEPA.

Why is CEPA and this review important to CCSPA and our members? CCSPA member companies provide products that improve the lives of Canadians, and CEPA governs our ingredients, both existing and new substances. Our ingredients, often the end use of the product—ant traps and disinfectants, for example—and the labelling are all regulated under the appropriate legislation and regulations. This is for both the consumer and the workplace. CEPA really is the umbrella legislation for the substances in the products. Today, I would like to outline how the act works for our industry, the success of substance management under the world-leading CEPA program in Canada, and our recommendations for improved communications to Canadians.

To put this act into context we need to know what it does and some of the history that has led us here. What is CEPA? It is an important piece of legislation "respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development."

The act came into force in 1999 after an exhaustive review by your predecessors in this very forum. At that time, the committee reviewed over 550 amendments that were outside the scope of the bill, of which 150 were adopted and included in the final bill after 93 hours of review. The act is over 400 pages and deals with a wide range of environmental and health issues: air, water, land, and chemicals and their management. It has a wide range of research authorities, data collection mechanisms, and oversight by the minister of both Environment and Health in the areas of substances.

It is a sophisticated piece of legislation that has led us to some significant outcomes for Canadians, one of which is the chemicals management plan, referred to as CMP, which is a science-based risk assessment program for chemicals and their management. CCSPA has supported this world-leading program since the formal announcement in 2006, and we have strived as an industry to ensure our pillars of sound science, due process, and effective communications have been embraced by the program.

This committee also reviewed the legislation in 2006, and CCSPA was an active participant at that time.

What sets the CMP apart from other programs around the world? The CMP stems from a 1999 amendment to categorize and screen the original 23,000 substances that were placed on the domestic substances list. What is the DSL? It's a snapshot in time of substances that were used in commerce between 1984 and 1986 that, under the 1999 amendment, were then categorized and screened against very specific environmental criteria: persistence, bioaccumulation, and inherent toxicity, plus for humans, the greatest potential for exposure.

What is on the DSL? The diversity of the substances on the DSL include chemicals, water, vitamins, sugar, etc. It is quite comprehensive. Therefore, Canada is systematically assessing all of those existing chemicals on the DSL and is ahead of the U.S. and Europe. The initial program was called the categorization and screening of the DSL. That seven-year process netted a result of approximately 19,000 substances being deemed as needing no further review and approximately 4,300 identified for review.

CMP was launched in 2006 with an ambitious review plan for those 4,300 substances, and timelines have been met for all intents and purposes. CMP 1 was announced with approximately 200 substances identified as being potentially CEPA toxic, and industry was challenged to bring data to the table to defend our uses. With a rigorous risk assessment process that allows industry and all stakeholders to participate in the science process, this program got under way. A direct result of that program is that Bisphenol A was removed from baby bottles.

When CMP 2 was launched in 2011, an innovative science-based approach to look at substances of similar structure was set for this phase, with the substances being identified and grouped. The results of that program, a cumulative assessment on phthalates, will be released this summer. Again, Canada is a world leader. To date, 22% of the CMP 1 substances have been recommended for schedule one and management. Now, a decade later, we are in the final phase of the program, CMP 3, where 1,554 substances will be reviewed and assessed in the next 4 years.

Canadians should be proud of this program. Our country is a global leader in how substances are assessed and managed, regardless of where that chemical is used.

Canada uses a risk-based approach. We look at the hazard and do an assessment. We look at the exposure and do an assessment. The final product is a risk assessment. A Canadian risk assessment means rigorously evaluating the potential hazards as well as use, conditions, and exposures, and using this information to ensure there's a sufficient margin of safety for Canadians. Doing this systematically for all substances in Canadian commerce is what sets us apart in the world.

Beginning in 1994, Canada has also had a mandate for rigorous pre-market review of new chemicals and, since 2001, has included substances used in Food and Drugs Act products. This sets us apart from the U.S., which does not do this, and from Europe, where new polymers are not subject to substance programs.

● (1115)

For our member companies, making safe and beneficial consumer products for Canadians is paramount. In order to deliver on this, we meet the high bar that CEPA set for all ingredients, existing and new. During this time, CCSPA members have been very responsive to meeting the needs of consumers and the environment, whether it was our voluntary initiative to reduce phosphorus in automatic dish-washer detergent; developing a guideline on volatile organic compound limits in consumer products; our ingredient disclosure program that our members adhere to; or working with all stakeholders on legislation to protect Canadians on product safety, which has led to new voluntary guidelines for packaging and labelling of single-use laundry detergent.

CEPA leads the way and makes us all do our jobs more effectively and with better outcomes.

The CMP is unique. It's built on the premise that human health and safety go hand in hand with a clean environment and sustainable economy. CMP delivers against CEPA objectives of a clean environment and sustainable economy, with the pillars of the program rooted in science-based decisions, due process for all stakeholders, and communicating to Canadians on the outcomes.

Canada should more actively profile our scientific excellence at all international forums so that others can learn and utilize the information and improve on their own science and risk assessments. Earlier this week, at the G-7 environment ministers' meeting in Japan, Minister McKenna and her colleagues made reference to strengthening the sound management of chemicals, and we support Canada in this regard.

Where does the program fall short? CMP outcomes, and the science behind the decisions are not well communicated to Canadians. Despite the opportunities to actively participate in the process, whether it be in your data collection surveys, the consultation processes via the *Canada Gazette*, participating in the CMP stakeholder advisory committee, or for scientists to engage in a science advisory committee, few people truly know the results. There is also an excellent CMP website that Canadians can access, but it's not well known.

Canadians need to know when and how these decisions are made and what the results are in a more easy-to-understand format. They also need to know how to engage in the process in a meaningful way. We would recommend that the government provide a mechanism on the website to advise Canadians on how they can participate in the consultation processes and engage. We would also ask the government to find ways to utilize the current communication tools to enhance information on results in an easy-to-understand format. Canada can be a leader in our science communication, and we are willing to be a partner in it to help ensure that happens.

Thank you for your time today. I'm happy to answer any questions.

● (1120)

The Chair: Thank you so much.

We really appreciate all of your being on time, if not a little faster than on time, so thank you for that. We'll get more time for questions.

Hon. Ed Fast (Abbotsford, CPC): Madam Chair, I have one point. As the witnesses are giving their statements—and this applies to all of our meetings—I think our translators often have great difficulty following very fast reading. Out of respect for them, could our witnesses pace their presentations so that our translators can follow?

The Chair: I think those are good words, and that was quite fast, and we will make sure to raise that point again. Thank you for doing that.

Next up are Darren and Beta from the Canadian Cosmetic, Toiletry and Fragrance Association. Welcome, and over to you. Thank you.

Mr. Darren Praznik (President and Chief Executive Officer, Canadian Cosmetic, Toiletry and Fragrance Association): Good morning to all the members of the committee.

We want to thank you very much for the opportunity to speak to you today. We have prepared a presentation in both official languages that I think was distributed, but I'm not going to read it. I simply want to touch on some of the highlights in my comments with you today.

I'm joined by Beta Montemayor, our director of environmental science and regulation at the CCTFA. As a trade association on behalf of our industry, we have been very much engaged. Beta has led our efforts in working with the CMP process over quite a number of years now and has a great deal of experience in this particular area. He is here today should you have any specific questions.

Our industry is cosmetics and personal care products, which covers everything from colour cosmetics to fragrances, moisturizers, sunscreens, cleansers, shampoos, anti-perspirants, toothpastes and other oral care. It's products that you use every day. We are downstream product users, as Shannon Coombs' association is. The producers of our raw materials have spoken to this committee earlier, but it's important to note that we are engaged in this process because our personal care and cosmetic products are, in essence, regulated both as products through the Food and Drugs Act and as ingredients that go into them through CEPA.

Many of the decisions that have been made over the last number of years on specific substances have resulted in changes, for example, to the cosmetic ingredient hot list that guides what substances can be put into cosmetics. The results of the work of CEPA affect us very directly and we've been very engaged in that process.

I want to pick up on something that my colleague mentioned about this program and its importance in relationship to the wider world. It's very easy to come to a program and look at it and point out things that may be shortcomings. Every program has shortcomings. In another life, I served in a provincial legislature and was responsible for regulatory departments and sat on your side of the table, so I came to appreciate in those days that what's very important for any particular program is context.

I think what's important to look at in our chemicals management program is context. This program is one of the leaders in the world. If you look at what was in place prior to the chemicals management plan, over a 10-year period I believe some 75 substances were reviewed. It was slow and cumbersome and not very good at serving the needs of Canadians, their health, or their environment.

Since we've had the chemicals management plan, as has been pointed out, some 21,000 of the 23,000 existing substances have now been assessed; 4,300 priorities were identified; and while all that was taking place, any new substance entering our marketplace was also assessed.

When you compare that context to what existed before, you really have to say that this has been an incredible program despite whatever shortcomings with it may be identified. As well, when you compare it to other parts of the world, the European Union with their REACH has a somewhat similar program and some differences and issues there, but Canada and the European Union are really two of the major world entities that have this kind of program. The United States doesn't have it, and are facing quite a dilemma and issues there with regulation happening at the state level and frustration at the national level and, some would argue, a real mess.

When you compare what we've been doing in Canada to the rest of the world, this program is truly a world leader in this area. It's not perfect, but certainly, when compared and put into context, it's a great success.

From our perspective—and I think we've highlighted this in our documents—what has really made this an envy of many jurisdictions is that it is risk-based. It does look at the intrinsic properties of substances; it does look at inherent hazards, and also at exposure, which is a critical part of the risk assessment process; and it determines whether or not there is, in fact, a real risk and what is the best way to manage that risk.

Making regulatory decisions based solely on one element in isolation of the other elements that need to be considered would be overly simplistic and inappropriate, and would potentially lead to misleading conclusions that could prohibit innovation and access to chemistries that are safe in reality. So we have a lot of those principles generally right in our system and they have, as I said, really been the envy of the world compared with other jurisdictions.

● (1125)

We also think the use of science and the weight of evidence is really important . What has been just so strong about the Canadian chemicals management plan is that not only does it look at the potential risks, the potential safety for the environment and human health, but also digs down and is able to assess if this is real It looks a real world data not just theoretical risk, and it's able to make conclusions and suggest or put in place risk management that is appropriate to real world risk.

When we were looking at what others have said about this, we thought it would be well worth us—and would highly suggest that the committee do so too—to look at the board of review process for Siloxane D5, which happened some years ago. It was carried out by three very prominent scientists who headed that board of review. They looked at evidence, had two weeks of hearings here in Ottawa where every interested stakeholder could make presentations and present the science, and they came out with a finding. However, what was very interesting is that they came out with some observations the about process, which were referenced recently in an article in the Huffington Post. If I may just conclude this with its comments:

> Like the scientific process itself, this approach to regulation encourages good faith skepticism, honest debate, and confidence in the regulations themselves. Most people, whether in Canada, Europe or the United States, understand that government investigations may be based on suspicions, but regulations must be based on science.

Despite whatever issues there may be and that no system is perfect, Canada did generally get this right with this program. It has a legislative mandate to complete its review by 2020. We would strongly suggest that it be allowed to do that, and then it can be fully assessed with improvements made going forward to where we want to be after 2020.

Those would be our comments.

I hope, Madam Chair, I have kept to the tradition of being within the 10 minutes.

The Chair: You're at seven minutes so we've got lots of time. We'll use that in questioning.

I want to welcome two substitute members today, Peter Fragiskatos Arif Virani. Thank you very much for joining us.

We're going to move to the questions now.

Mr. Darren Fisher: Finally some smart people around the table.

Hon. Ed Fast: I think Arif is already a veteran.

The Chair: There you go.

Mr. Mike Bossio: I think this is your second visit to this committee?

The Chair: No, I don't think so.

Mr. Mike Bossio: I thought he had been here before.

The Chair: We just want to mention that we have just sent around Mrs. Coombs' one-pager.

We start now with Mr. Eglinski, for questioning.

Just so that you all know, I use a little system. We have six minutes of questioning, and when you get within a minute, I hold up the yellow card and when we're out of time I hold up the red. I try not to interrupt, but I will be mindful of the times. Thanks.

Mr. Eglinski.

Mr. Jim Eglinski (Yellowhead, CPC): Mrs. Coombs, would you care to elaborate a little more on your CCSPA ingredients disclosure program? Did you have support for this program from the other organizations, especially from industry?

Ms. Shannon Coombs: CCSPA announced our voluntary ingredient initiative in 2008. One of the things we were looking for was to provide more meaningful information to consumers who were looking for information about the ingredients. So we launched this program, and then amended it in 2010 to increase its scope from intentionally added ingredients to preservatives, dyes, and fragrances.

We have had 100% adherence to the program from the members since its inception and we do regular audits of the members to ensure that they are complying with the program.

One of the modern flexibilities of the program is that we can provide the information to consumers either through websites, a 1-800 number, or on product labels. So companies have the option of doing one of those, or all of the above.

When we launched the program, we were very pleased to have endorsements and support from not only the Canadian Lung Association, the Canadian Cancer Society, but also the Canadian Institute of Child Health; the federal government of the day of Prime Minister Harper; and the Ontario provincial government of the day of Dalton McGuinty.

● (1130)

Mr. Jim Eglinski: You mentioned the three pillars: science, due process, and effective communication. I was wondering if you could just expand on that a bit and tell me what you do in your evaluation of these products.

Then after you finish, I wonder if Darren can give us a little bit of an idea too, because I think the two associations overlap a lot. There are many similarities.

So could you just elaborate a little bit more on what you actually do in the research and how far you go.

Ms. Shannon Coombs: From the downstream user's perspective, Madam Chair, we are very engaged in making sure that the best science available is brought to bear in the risk assessments. As Darren alluded to, the substance D5 had a rigorous scientific review, and new science was developed and brought to that process. He can speak more to that point.

For us, we really want to make sure that the risk assessment and whatever goes out for comment is based on the best science of the day and that everyone has had an opportunity to comment, whether industry, through the draft assessments and processes, or other groups that are involved. I know that CELA and Fe have commented on almost every batch in the CMP process, CMP 1.

From an effective communications standpoint, we work very hard to educate not only our members, but our colleagues in the U.S. as well, helping them educate their members on the program so they can participate. We work with our members and their customers as well. We also work with the retail association. That is something CCTFA and CCSPA have collaborated on over the course of the program.

Mr. Darren Praznik: I am going to ask Beta Montemayor to comment specifically. He is a toxicologist by training and has worked in this field throughout his career.

Mr. Beta Montemayor (Director, Environmental Science and Regulation, Canadian Cosmetic, Toiletry and Fragrance Association): I think risk assessment is a complicated process. It is not always easy to explain, but I will try to do that very briefly.

I think we mentioned three concepts that are always taken into account.

First, we look at the properties of a material. These are things like the shape. What is the form? What is the solubility? How is the substance going to behave on the basis of its chemical characteristics? Understanding that would give you an idea of how it is going to behave in the environment and in the human body.

We then look at inherent hazards. What is the potential that this substance may cause an adverse effect?

Then we take a look at exposure. When you look at exposure, you look at what the route of exposure is. Are you being exposed by ingestion? Are you being exposed by a topical application? Are you being exposed in the air? You look at what conditions those exposures happen under. You look at cumulative exposure.

In our products, we know that consumers use multiple products every day, so it is important to look not just at the substance in one product, but the substances in a multitude of products so that you understand the cumulative impact that has.

You look at sensitive populations. Are there groups that are going to be specifically exposed that you are going to want to make sure you adequately protect for?

Risk assessment, by its very nature, is very conservative. It uses worst-case assumptions. It allows for uncertainty to be addressed in terms of adding safety factors or uncertainty factors so that you can be sure that the outcome of a risk assessment is going to be conservative and adequately protective of even the most sensitive population.

Mr. Jim Eglinski: You both mentioned that we are leading most countries in what we are doing here. Do you work with the Europeans and the Americans and pass information back and forth? Is there co-operation between countries that have similar programs to this so that everybody is not trying to invent the same wheel?

Ms. Shannon Coombs: There are some differences in how the programs work. Industry does work collaboratively, I would say, on a North American basis. In my opinion, Madam Chair, the EU program is different because you have a registration process, which has been quite costly and cumbersome. I think there has been such an influx of registrations that the EU is having a hard time deciding what the priorities are.

What is different from our program is that the priorities were identified, and they went at it very systematically, so the ones that were considered to be the industry challenge, or identified as a high priority, were in CMP 1. It is a very different approach.

In the U.S., I believe they will be modifying their legislation, the TSCA. The U.S. EPA is looking at...the legislators are modifying it, so they will come up with a priority-setting exercise very much based on CMP.

● (1135)

The Chair: Mr. Bossio, go ahead.

Mr. Mike Bossio: Thank you all for coming here today.

It's great to see you, Joe. It's been a little while. I hope all is well.

As Mr. Castrilli knows, I've been involved for the last couple of decades in fighting a mega-landfill from being built in our community. One of the reasons for that is the old landfill that is there has been contaminating residential wells and wreaking havoc on the environment.

We've had an incredibly difficult time to hold the company to account for that contamination in the environment, and it's because of the weak nature around drinking water standards. One chemical, in particular, that is in cosmetics, in solvents, and in many products that have been used by consumers is called 1,4-dioxane. There's no drinking water standard for it. We know it's a toxic carcinogen. We know no amount of it should be in anyone's water, but yet it's one of those chemicals that, once again, has not had the proper amount of regulatory oversight in order to virtually eliminate it from the environment so that the biocumulative effects of that chemical that ends up in landfills don't have an adverse impact on the environment and on human health.

Joe, maybe you can speak to this.

I don't know if it's a lack of resources for Health Canada to be able to do it, or if it's a lack of oversight that a chemical like this shouldn't be introduced to the environment in the first place, or a lack of, once again, substitution planning that enables this to happen in the first place.

Mr. Joseph Castrilli: Well, thank you, Michael, for the question.

I think it's a combination of all the factors you mentioned. Our screening of substances is not what it should be. Once they're available commercially, our ability to control them is over-rated, and when that occurs our ability to ensure compliance and enforcement is not up to snuff.

I think all of those problems are embedded in CEPA as currently drafted. I'd add it's partially the fault of ineffective provincial environmental laws as well. But when you're talking about a substance as hazardous as 1,4-dioxane, the buck stops with CEPA, and CEPA has not been up to the task, I'm not going to say with respect to this particular chemical, because I'm not that familiar with it, but with respect to the release of toxic substances generally, as some of the data that we've provided to the committee demonstrates.

The levels of releases we are seeing with persistent bioaccumulative and toxic substances in the six-year period since the CMP process came into effect are not a recommendation for maintaining CEPA as currently drafted.

Mr. Mike Bossio: I'll just add salt to the wound. What we find is that many other jurisdictions in Europe or the U.S. have given CEPA a drinking water standard that we could quickly adopt, that does have a restriction that virtually eliminates this chemical, because they have readings of 0.3 to 3 ug per litre. Yet we don't adopt that science-based, factual evidence that's out there by other jurisdictions that we greatly respect.

Do you think we could also save a lot of money in research and data collection that we don't have the time or the resources for, just by utilizing many other jurisdictions' research?

● (1140)

Mr. Joseph Castrilli: I agree with you.

In our material, we mentioned, for example, the situation with the application of the half-life for persistence in water that was applied during the categorization process. It's two to three times less stringent than some of the persistence criteria that we see in the Stockholm Convention, or applied by USEPA, or applied by REACH, among others There are instances where better work has been done elsewhere that could be adopted here, but it has not occurred in Canada.

Mr. Mike Bossio: Ed mentioned this earlier, as have previous witnesses, and I'd like to raise it as well. Is it not a big problem with the definition of “toxic”, in and of itself, that unless we have a definition that better categorizes a toxic substance...?

As anyone can say, yes, water, if you have too much of it, is toxic, because it kills you. But how can we establish a better definition of that to be utilized moving forward?

Mr. Joseph Castrilli: This was an issue in the last CEPA review, in 2005. Our organization suggested that the definition of what's “CEPA-toxic” under this statute makes the requirements extremely onerous in terms of—how shall I say—overcoming the hurdles that are provided by section 64 of the statute. It's one of the reasons why, though not the only reason why, there are only 132 substances on the list of toxic substances after a quarter century.

I think we have to become more realistic about what we will define as “toxic” for the purposes of regulation under federal law.

The Chair: Next up is François Choquette.

Thank you very much for joining us today. Over to you.

[*Translation*]

Mr. François Choquette (Drummond, NDP): Thank you very much, Madam Chair.

Ladies and gentlemen, thank you very much for your testimony. I apologize for missing your presentations, but I will still put a few questions to you.

The first question has to do with cosmetics and personal care products. The NDP worked very hard to ensure a ban on the use of plastic microbeads in those products. Those microbeads end up in the Great Lakes in very large quantities....

Do you have access to the interpretation?

[*English*]

The Chair: We just lost translation.

[*Translation*]

Mr. François Choquette: Can I start over? I will go quickly, without repeating the preface.

[*English*]

The Chair: No, no, you don't have to rush. We'll start the clock again. We just want to make sure that the translation is working.

[*Translation*]

Mr. François Choquette: Is everything okay?

Yes, the interpretation is working.

[*English*]

The Chair: Thank you.

[*Translation*]

Mr. François Choquette: I'm sorry about this setback.

So I was saying that, for the NDP, the environment is of course very important. We are fighting to ensure that our waterways—the Great Lakes, the St. Lawrence River—are protected. A component of some cosmetics and personal care products, plastic microbeads, were used extensively in the past. The House of Commons unanimously adopted a motion to ban the use of plastic microbeads in cosmetics and personal care products.

As a cosmetics trade association, where do you stand on this issue? How is the transition done gradually? Perhaps you could also share your thoughts on the Canadian Environmental Protection Act.

[*English*]

Mr. Darren Praznik: I want to start by saying we've been very engaged in this for over a year. In fact it was Mr. Brian Masse, the member of Parliament for Windsor West, who first reached out to us to work with us. Our industry recognized that there was a problem with these plastic microbeads. They're used as an exfoliant in products to remove dead or dry skin. It was recognized that they were not being caught in the waste water system, and so our member companies, the vast majority of which are in personal care products, committed fairly quickly to removing them from those products.

When we met with Mr. Masse, a couple of things were important to us as an industry. We wanted to have a regulation for two reasons. One was that we didn't want those who might not be part of our association to still be able to import them, or if someone was importing a low-cost product from outside of the country and didn't know, there had to be a way to stop that.

Secondly, there are those who counterfeit products. There are a lot of counterfeit products on the market, and we wanted to ensure that there was a regulatory authority in place that would help to get those counterfeit products off the market. We wanted regulation. We also wanted it to be federal and not provincial, because our products are sold everywhere in Canada. We didn't want to have different regulations in Ontario and Quebec and Manitoba, etc. That would make it impossible to implement. Provinces also don't have the enforcement vehicles to go and check products, whereas the federal government does.

The third concern we had was that whatever that regulation was, it had to be consistent internationally. This issue was first addressed legislatively in the United States. A model called the Illinois model was developed. It included a definition, with periods of time to remove products in different classifications of products. Some were in drugs. Some were in cosmetics. We wanted a common definition and a common time frame so we could implement it universally. Nothing makes it more difficult to implement than when you have different, maybe contradictory, definitions. Again, we're making products not just for Canada or Ontario but for international markets.

That's what we asked for. We made our case to Mr. Masse. He brought a resolution to the House of Commons. We worked with the office of the federal Minister of the Environment at the time. We had outreached to the then Liberal caucus. I think because we were very supportive of it, there was a very rare occurrence in the last Parliament: there was a unanimous decision to pass that resolution. That led to the Minister of the Environment beginning the process, under CEPA, to put in place a regulation. That process is well advanced. I think they've worked out all of the detail and it's working through the process. The beauty of that is we will get a Canadian regulation consistent internationally that will be enforceable.

In terms of our member companies, they are all in the process of either being out of them or in the process of getting out of them. I think this was great co-operation by everyone.

● (1145)

[*Translation*]

Mr. François Choquette: Thank you very much. I'm happy to hear that.

My next question is for the representatives of the Canadian Environmental Law Association. I would like you to summarize your position on the

[*English*]

risk-based compared to focusing on the hazard of a substance.

[*Translation*]

Which of the two positions do you espouse and how do you think the approach should be improved? Our current approach is based on risks rather than on hazards.

What are your suggestions?

[*English*]

Mr. Joseph Castrilli: In our respectful submission, it is risky to rely on a risk-based approach in regulating toxic substances in Canada. It is true, as the industry members have said, that CELA is based on risk, and risk is a function of hazard times exposure. I think I understand the industry position to be that if there is no exposure, there is no risk. I think the reality of the situation is that many hazardous substances available in the Canadian environment thought to have no exposure have proven to be very available in the environment. Using a hazard-based assessment approach that assumes there will be exposure, in our view, is more precautionary than is a risk-based approach, and that's essentially what has gone on in the REACH process in Europe.

Given the levels of toxic substances we are seeing being released into the environment, the data for some of which we've provided in our material today, in our view there is no alterative for Canada but to move away from a risk-based approach and move toward a hazard-based approach in the future if we're going to begin to reduce the levels of increases we are seeing currently in the data.

The Chair: I'm going to have to cut that six minutes there.

I want to make a comment to those of you on video conference. If you want to respond to something, wave your hands so that the questioner knows you might have something to say about what's being discussed. It's up to them to choose whether they give you the floor, but that way we'll know that you want to respond. It's very hard for us to get a sense of that when you're on video conference.

We'll move to Mr. Amos.

● (1150)

Mr. William Amos (Pontiac, Lib.): Thank you to our witnesses, both by video and in person. I appreciate the expertise you're all bringing to this. I appreciate the experience you have with CEPA as a regulatory regime.

I don't think any of us takes lightly the responsibility of engaging in this initiative. It obviously has major economic impacts as well as human health and environmental impacts, and we have to evaluate over the course of years what needs to be improved. Even if one accepts that the regime has performed well—and I think to a degree that is open to question—I think we need to look at how we can augment, or how we can clearly become global leaders in the field of chemicals management and toxics prevention or reduction.

I'd like to address my first question to the representatives from the Canadian Environmental Law Association. The issue of incorporating environmental justice principles into CEPA has been raised. I wonder if you could provide your thoughts on how that would best be done. There's this low-hanging fruit around preambular language and the purpose of the statute. In the context of a sophisticated regulatory regime where—and forgive the analogy or metaphor—there are many apples in the cart, I wonder how you incorporate that kind of notion.

Mr. Joseph Castrilli: The issue of environmental justice was raised not only today by you, but also in the testimony in March, so we've had an opportunity to think about it.

Our understanding of the position of the industry representatives at the time was that, in their view, such considerations were already said to be built into the act. Now, we don't agree that this is in fact the case, and is certainly not in the wording of the statute itself. In our view, if the process of incorporating environmental justice considerations is already taking place in the regime, then it would be a very simple matter to add it to the statute so there is correspondence between what is happening behind the scenes and what one sees when one reads the legislation.

To address specifically how to do it, one of the precedents we have had in Canadian law for quite a number of years now has been the provisions in the Pest Control Products Act that begin to address the issue of what needs to be considered, not only during the course of applications for new chemicals but also in re-evaluations or special reviews. One place to look for a precedent on where to start would be the Pest Control Products Act itself.

I think as a principle not only does it need to appear in the declaratory portion of the statute, but it also needs to be infused throughout the provisions. It needs to be part of the purpose and part of the working statutory language as you work your way through the statute itself. Also, of course, it needs to be reflected in the regulations that would apply to the particular areas of concern.

Mr. William Amos: As a follow-up, would the Canadian Environmental Law Association—and, of course, I would open this question to any group across Canada, including non-governmental groups that have spoken about this—be willing to provide written suggestions as to how that infusion in the core of the statute would best be achieved? That would be most helpful, I think, because it's not an uncomplicated exercise.

Mr. Joseph Castrilli: We would be happy to do that, sir.

Mr. William Amos: Thank you.

To both of the industry groups here, I'd like to ask about the ability of CEPA to protect the public and the environment from cumulative effects. There have been a number of concerns raised by groups across the board, indicating that the statute itself is not adequate to the task. I wonder how you would respond to that.

● (1155)

Mr. Beta Montemayor: From our perspective, we believe the statute is sufficiently robust. It is a risk-based system. As I mentioned previously, when we do a risk assessment it inherently takes into account cumulative exposure considerations and multiple exposure considerations. It looks at the availability of all evidence, and you look collectively at how that is going to be integrated into your decision-making model. A risk-based approach allows those considerations to be taken into account.

I would submit that the statute itself is already sufficiently robust and specifically designed to account for those circumstances. There are many examples where cumulative exposure does get integrated into the decision-making matrix.

Mr. William Amos: Ms. Coombs.

The Chair: I'm sorry, but you're over six minutes.

Mr. Fisher is next.

Mr. Darren Fisher: I'll start with the topic of CMP because I'm interested in the balance between industry and environmental organizations. We've seen that industry says that it's efficient, it's effective, and that their chemical management policies are robust, and that other jurisdictions should emulate them, and wording like that. I'd be interested in CELA's responding to the current CMP.

Ms. Fe de Leon (Researcher, Canadian Environmental Law Association): I think CMP was needed when the results of categorization were completed back in 2006. I think the government has done a fantastic job of trying to move through risk assessments in the context of the CMP focus.

I think where it has failed to some degree is ensuring that the pillars of CEPA—with respect to achieving pollution prevention and making that an ultimate goal of the program—are completely realized in the context of the CMP. That has yet to happen.

While a lot of effort and resources have been put into conducting risk assessment and collecting data through the provisions included in CEPA, the results in terms of prohibiting and eliminating the worst chemicals haven't yet been fully realized. I think this is where we're coming from as an organization, as there needs to be some sort of review of the government's commitment to upholding those important pillars that CEPA claimed in 1999 that it would try to achieve in 2000.

In the context of moving forward on assessment, I think it has done that. It will achieve that by 2020, but the challenge is how good are the risk assessments or risk management that is put in place. If we're looking back at some of the data that CELA has pulled together from the CEC on the persistent bioaccumulative toxic chemicals, the increase has been significant from 2006 to 2012. That should be a signal to where some of the efforts can be placed.

Mr. Darren Fisher: It looked like the other Darren wanted to say something quickly, and because I like his name so much, maybe I'll give him just 15 or 20 seconds because this time is going to get eaten up.

Voices: Oh, oh!

● (1200)

Mr. Darren Praznik: I want to say you got to the heart of it. There is a fundamental difference between a hazard-based system and a risk-based system. It sounds great to say that we don't want any hazards in our environment, but every single substance out there has the potential to be a hazard.

If you just base a system on hazard, you could always find a reason not to have it there. That's why every hazard has to have the context of exposure to know what we're managing.

It is a fundamental difference, and every system that has worked in the world and been effective has been based on risk and not hazard. It is important, and it is a fundamental difference. I'll just say quickly that if you look at the cup of coffee you may drink, there are many substances in it that are carcinogens, but we wouldn't say that we're not going to drink coffee. We have to have some context to it.

Mr. Darren Fisher: I have to have coffee.

I'm going to jump down the list quickly here. I'm not even sure who I want to ask this question of, but I think I want to ask Beta. Does CEPA adequately take into account vulnerable populations as communities of greater risk?

I'm thinking about an example, and I might get this wrong, but mercury is much more prevalent in northern communities. I'm not sure if that's fish, or if that's environment, or if that's man made. Who knows, it could be light bulbs in the garbage can, but do you think CEPA takes that into account?

Mr. Beta Montemayor: Absolutely. I think what CEPA does is provide for an opportunity to look holistically at how a chemical behaves. You look at it from the start. How does it get into the environment? What happens to it in the environment? How does it get through the body? How does your body process it? It looks at that without prejudice in terms of whether somebody is male, female, or a child. It takes that into account when there are specific concerns that are identified.

Let's say you know how the molecule may behave. If you think the child is going to have a greater likelihood for exposure, you take that into account in your risk assessment, and you make that the driver of the critical effect that you're trying to regulate. It does take that into account very stringently and, I think, very robustly.

Mr. Darren Fisher: Do I have time for a short snapper?

The Chair: Yup, you have one minute.

Mr. Darren Fisher: Finished personal care products get regulated by the Food and Drugs Act, but the ingredients fall under CEPA. For industry, what kinds of challenges does this pose?

Mr. Darren Praznik: If I may say so, it has actually worked very well, because you have the review of substances, the general review of substances for human health and the environment, and where that has affected our formulations it has been translated by the people at Health Canada into things like the cosmetic ingredient hot list. If CEPA has produced a recommendation that a substance be prohibited or restricted in a personal care product, that is showing up on the hot list, and then it's prohibited or restricted. There has been a very good amalgamation of the work of both. It has been very effective that way.

Mr. Darren Fisher: Okay.

I suppose I'm done. Can I have 10 more minutes?

The Chair: No.

Voices: Oh, oh!

The Chair: You have 10 seconds. Nice try, though.

Mr. Mike Bossio: Ed would sit out. I think he'd be willing to sacrifice his time.

Voices: Oh, oh!

Hon. Ed Fast: Never.

The Chair: Mr. Fast, you're up next.

Hon. Ed Fast: A casual observer of today's proceedings could conclude that we're dealing with two solitudes here. It's not only risk-based versus hazard-based approaches to assessment. It's also the conclusions of the various witnesses here as to whether our current system is working.

I listened to Mr. Castrilli, who listed a host of problems and changes that he would like to see.

Beyond moving to a hazard-based assessment process, he also highlighted the four principles that he would love to see incorporated in the legislation, including greater mandatory obligations on the government, especially with respect to pollution prevention; accentuating the role of the public, which I believe Ms. Coombs also referenced; establishing in the act unmistakably clear terms that the burden of proof rests with industry to establish the safety of existing or new chemicals; and then finally, a fundamental principle that because the law already requires application of the precautionary principle, in erring on the side of caution in its decision-making on the availability of chemicals, government must require an examination of alternatives as well as require substitution of safer substances.

Beyond those principles, Mr. Castrilli of course listed many different things that he feels are weaknesses in the current process and things that he wants to change.

Your opportunity here, as consumer product associations, is that we're doing this study in advance of what may be some legislation that comes down the pike. We're not doing it after the fact, where we're reviewing drafted legislation, so I have a question for both consumer products organizations. You've heard Mr. Castrilli's interventions here. Are there any items on his list of changes or improvements that your industries could actually support? That would be helpful for us as this study moves forward and we have to prepare a report on this.

Let's start with Mr. Praznik.

Mr. Darren Praznik: I think what it boils down to, in setting up a system, is that it should be about three things: science, science, science. At the end of the day, we all want to make sure that we're doing the right thing. That article I referenced said that suspicion should lead to investigation. Regulation has to be based on science. What's really important here is not that we have little rules that predetermine the outcome. We need to have a system that is robust and that allows experts with good knowledge to be able to make assessments on the basis of sound science. We, as industry and suppliers, can make our case. People like CELA can make their case. We can submit data; we can submit information. Then we need people to make a decision who are not influenced by industry or environmental groups, but are scientists who can make an honest decision on the basis of science. Then we all need to live with it.

Additionally, if science changes, if we get new information that says something that we thought was safe isn't, or something we thought wasn't safe is, that system should also be robust enough that you can revisit it and look at that new science.

We think the more open that process is in making it a science-based system, the better it will serve everyone's interest. These should be debates about science with adjudicators who understand science and risk assessment and can make those determinations. If that's the case, I think everyone can live with it.

Where you get into the battles on either side is when you're trying to put in little provisions here or there that tip the balance so that it isn't a science-based decision. I think that's where we lose. We've seen that in other jurisdictions from time to time, and that's where the criticisms of them are coming from. The more we can keep this to a science-based system and have these robust debates, the better it will be for Canadians and our environment.

● (1205)

Hon. Ed Fast: I'll just ask the question again. I'm assuming, then, that there's nothing in Mr. Castrilli's suggestions that would be attractive to you for improving the current legislation, which is in fact risk based?

Mr. Darren Praznik: I would love to have an opportunity for us to sit down and chat, because we're in a position where we're putting out principles. We may not be understanding each other, so we probably have to do some work today. I'm not going to dismiss anything out of hand; but again, if you're making decisions on the basis of sound science, and you have a process that's robust, it should produce good, sound, scientific decisions.

Hon. Ed Fast: My guess is that Mr. Castrilli would welcome that engagement with you. If this meeting actually leads to that, we've achieved something productive, I assume.

Ms. Coombs, could you respond to my specific question? Was there anything in Mr. Castrilli's list of suggested changes that your organization could accept?

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

I fear that red card.

Voices: Oh, oh!

The Chair: I'll give you 40 seconds.

Ms. Shannon Coombs: Okay, thank you.

To us, Canadians are confident about the products that they use. They and their ingredients are regulated. They are safe when used according to the product's directions. We have a lot of various laws governing our products, not just CEPA, that are risk based. That's the construct of how we provide safe and effective products to Canadians. I'm not sure I see our moving away to support anything that's not risk based. However, in the discussions going forward about how we look at reassessment—and I know there was discussion in March—I would point out that the Pest Control Products Act is a pre-market-approval process act. All of the assessments are done before those products are brought to market. On our part, we look at the CMP process as, once we effectively finish—

Oh, there's the red card.

The Chair: No, carry on.

Ms. Shannon Coombs: Once we see the assessments being completed in 2020, we will effectively be in a reassessment phase. The two departments have done a really good job of identifying what that evaluation process is and all the triggers they have for reassessment, some of which are legislated, like sections 70 and 75 of the bill, and also other feeders as well. I would encourage you to ask the departments to provide that information to you so that you can look at how they do that process without having anything formal in the act, because we think it's being done.

The Chair: That's a good suggestion. Thank you very much.

We now have Mr. Bossio again.

Mr. Mike Bossio: I hear Darren's comments around science, but science isn't just the science of the day. It is also the historical evidence that suggests that biocumulative impacts are occurring in the environment.

If CEPA is working, then the numbers don't indicate that it is. When you look at some of the data points, you will see, for example, that California has the number one GDP out there, but has less than half of Ontario's onsite air releases of carcinogens. Massachusetts has a GDP similar to Ontario's, but has one-twentieth of those same releases.

There are similar numbers as well from the standpoint of pollution levels overall: almost 209 million kilograms are being released in North America, and Canada contributes 66 million of that. Releases into the air are 75 million kilograms in North America, with 31 million kilograms coming from Canadian facilities. When you look at the size of our economy and population, we are very over-represented in the amount of pollution we're releasing into our environment and its impact on human health.

We're using risk-based assessments, yet microbeads got into the market and wreaked havoc. There are far more other new substances are coming down the pipe through the nano materials. We've been going down this risk assessment path, yet it doesn't stop these chemicals from being introduced. Even when the science comes along to say they should be virtually eliminated, they're not being eliminated.

Mr. Castrilli, they gave the industry side an opportunity to say what they would accept or to answer this whole question of the hazard- versus risk-based approaches, and I would like to give you that opportunity once again to talk about the hazard approach versus the risk-based approach to assessment.

● (1210)

Ms. Fe de Leon: I'll provide some insight into that.

There is a role for the hazard-based approach, which can be incorporated into CEPA. A heavily weighted priority is given to science when it comes to a risk-based approach. Often, the science doesn't always keep pace with the problems we're finding with chemicals on the market, so there's a delay in responding to those challenges.

From a hazard perspective, one of the things you can consider in the context of CEPA is being able to prioritize the opportunities for shifting from chemicals that demonstrate some sort of impacts on the environment and human health from a hazard perspective. I don't think you would get that in the context of solely relying on a risk-based approach.

That said, given that there are gaps in the science in the context of the risk assessments that are being conducted, one of the issues that does not seem to come into play as much as it should is the role of the precautionary principle. Where do you incorporate that when decisions are being made in the context of science gaps?

I'll leave it at that, and if Joe wants to add to it, that would be great.

Mr. Joseph Castrilli: Mr. Bossio, the summary that you gave of the levels of emissions that we're seeing, which we had set out in our material, I think constitutes an indictment of the risk-based approach. If the risk-based approach were effective, we wouldn't be seeing the kinds of increases in toxic substances that we saw in the six-year period since the CMP came into effect. There are two tables at the end of our speaking notes that talk about the data for carcinogens; reproductive toxicants and developmental contaminants; and persistent, bioaccummulative and toxic chemicals both on-site releases and off-site releases. But the CEC also allows you to evaluate data even more finely than that.

There's a further table that we didn't have enough time to complete but that we wanted to present to the committee. It's similar in format to the tables we did provide. That table is with respect to on-site and off-site releases of substances that are designated CEPA-toxic and are listed in schedule 1 of the Canadian Environmental Protection Act. The levels of releases and the percentage increases from 2006 to 2012 are comparable to what you're looking at on the tables we did provide. So, even in respect of the substances that have gone through the risk assessment process, have been deemed to be CEPA-toxic, and have been placed in schedule 1, we continue to see major increases in levels of emissions from year to year. In my view, the only way the risk-based assessment process can survive this kind of challenge is to reduce those levels to zero. If it can't do it, it's time to get rid of the risk-based approach.

● (1215)

Mr. Mike Bossio: I'd like to throw it out to industry on that count. Here we have—

The Chair: Mike, we're really almost out of time. So, be really quick.

Mr. Mike Bossio: —massive increases in toxic chemicals. And even for chemicals that are on the virtual elimination list, no substitution planning has gone into that. These things have gone on for decades. So how does the industry respond to that?

The Chair: You have 30 seconds.

Mr. Beta Montemayor: You have to take a look at, in context, what those releases really mean and what they represent. I think it's important to understand that materials are going to be released, and I think you have to look at how those releases are going to impact Canadians. I think making that assessment, hopefully one that uses the application of risk assessment and science, will inform the best placed risk management strategy that you can move forward to ensure that those substances are managed.

Mr. Mike Bossio: But that's failed at so many levels.

The Chair: Mike, I have to cut you off.

Mr. Mike Bossio: How can you keep going back to the same type of assessment when you keep failing time and again?

The Chair: Mike, I have to cut you off. I'm really sorry. We're at seven minutes, so I have to be fair with everybody.

We'll go to Mr. Eglinski.

Mr. Jim Eglinski: That was a very interesting question. I'd like you to follow up with a little bit more of your answer on that. Please, take my time and answer.

Mr. Beta Montemayor: I was interrupted and I can't even remember what I was saying.

The Chair: You were talking about....

Mr. Beta Montemayor: I think you have to come up with an understanding of what metrics you are using to evaluate whether or not those controls are accomplishing the risk management objectives they are outlined and identified to accomplish. I think CEPA has an inherent process that allows the government and Canadians to look back and evaluate the strength of those risk management options you've identified. I think we've done that in numerous cases. You've actually been able to demonstrate, and the government has been able to demonstrate, that there have been effective reductions. Sometimes those might not necessarily be to the degree that one might want, but I think there is evidence out there that CEPA demonstrates that you have the ability to assess whether or not that risk management activity is in fact accomplishing what it was designed to do, or whether a pollution prevention plan is working the way you intended it to. You have metrics in the system that allow you to make those determinations and to make a risk-based decision as to whether or not you have to continue with that course of action, change action, or implement another control if you find that the risk mitigation measures are not accomplishing the objective they were intended to.

Mr. Jim Eglinski: I wonder if I could get a comment from Ms. Coombs on that, please.

Ms. Shannon Coombs: The way the act is constructed, there is virtual elimination and then there is prohibition. Virtual elimination is about limiting contaminants in an effluent, as an example, whereas prohibition is about banning the manufacture. That is what, I think, you're trying to get at. I'm not sure if maybe we need some explanation from the officials on what the difference is and how you get on the list. I think there is some concern about VE and that there have only been a few substances. It was mentioned that there is one, but I believe there are two that have been on the list since 2005. Perhaps that could help clarify what the criteria are, because maybe we could have some discussion on how we could manage that better.

Mr. Jim Eglinski: Mr. Montemayor, Mr. Bossio cited a bunch of figures comparing out GDP with that of Massachusetts and other things. He was pointing out that we had such higher numbers than the United States did, yet the population of the United States is much greater than ours. In your experience, at the science level, can you give me an answer for why the numbers would be so different? We're saying that we are further ahead than the United States in many areas in our science and research, yet the numbers seem to say that we are very different. I wonder if you could clarify that a little, please, from the scientific end of it.

● (1220)

Mr. Beta Montemayor: I'm not sure if I can off the cuff, because I'm not aware of the specific data that was referenced. What I could probably do is to conceptualize the issue of the focus being simply on releases and measuring those. Releases are an important part of the equation, as we've talked about today, but those releases should be put into the context of whether or not we can identify a need to manage those releases. From our perspective, if you have a science and risk-based determination as to what controls make sense, where do you put your dollars to be able to control those releases? The difference is that the onus is on trying to understand the actual impact, the real-life impact of those controls, and whether or not there is a necessary requirement to in fact manage a risk associated with those releases.

Mr. Jim Eglinski: Okay.

The Chair: You have a minute and a half, Mr. Fast.

Hon. Ed Fast: I would just invite your responses to the more general question. I think the suggestion from Mr. Bossio, and certainly from Mr. Castrilli, is that what we have right now is a mess, something that is not working in any way to protect Canadians.

Your testimony table was that we have a system that's risk-based, that it is world leading and is recognized as such and should be maintained, with perhaps some minor improvements along the way. Is it still your assessment that CEPA, as it presently stands, should remain—not only the risk-based element of it, but the act as it presently stands? And if not, what elements of it would you specifically change to enhance the protection of human health and safety?

Ms. Shannon Coombs: As it currently stands, CEPA is doing a very good job. There were a lot of recommendations put forward by this committee in 2006. There was an interim government response in 2007, and there are a lot of things that the government has acted upon, some of which include cumulative assessments; taking account of cancer end-points in the risk assessment; dealing with vulnerable populations in the risk assessment; and making sure there are adequate funds for the CMP process.

There are a lot of things that we talk about today that have been implemented but they're just not in the act. So, no, I don't see any amendments at this time.

Hon. Ed Fast: Madam Chair, could I just ask that the witnesses, the two consumer products associations, provide us with a response to Mr. Bossio's statistics and his assessment of those statistics so that we will have a fair evaluation at this table of what those statistics might mean?

The Chair: A balance of the two. Sure, that's fine. That will be good.

The last questioner is Mr. Choquette. You have three minutes.

[*Translation*]

Mr. François Choquette: Since I have only three minutes left, I will get right to the point.

I have questions for the representatives of the Canadian Environmental Law Association.

You may know that Linda Duncan, my NDP colleague from Edmonton, introduced a bill to establish rights to a healthy environment. The Canadian Environmental Protection Act does not really contain that environmental justice principle. Would you agree with adding it?

[*English*]

Mr. Joseph Castrilli: My apologies. I missed the very last portion of that. I missed the question.

[*Translation*]

Mr. François Choquette: I was actually asking what your point of view is on the environmental justice principle in the legislation. What is your point of view and what are your recommendations in relation to environmental justice in the CEPA?

● (1225)

[*English*]

Mr. Joseph Castrilli: In our written material, we indicated that we support the recommendations made by the witnesses for the non-governmental environmental organizations that appeared before the committee on, I believe, March 10. One of those recommendations included environmental justice principles.

I should tell you that the Canadian Environmental Law Association, which was founded in 1970, was premised on the assumption that existing laws to protect the environment then—and, I would add, now, 50 years later—are not self-regulating; that governments can only do so much; and that where the effectiveness of government regulation ends, it must be enhanced by members of the public having the ability to use various instruments, whether it's information-gathering, appeals, or civil actions, to supplement what government is either not able to do or not willing to do.

Environmental justice is a modern version of the principle that CELA was established on 50 years ago, so we obviously support it. We think it's past due that it appear in CEPA.

[*Translation*]

Mr. François Choquette: My last question is about the National Pollutant Release Inventory. I spent hours and even years working on the issue of shale gas, and that industry is extremely complicated to understand. Many secrets and difficulties are stemming from a lack of transparency. As you know, certain sectors are exempted from participating in the National Pollutant Release Inventory, including the oil and gas sector. Could you tell me what you recommend for achieving a healthy environment? I think that all companies should be on a level playing field.

[*English*]

The Chair: That's a bit longer than I was hoping for.

[*Translation*]

Mr. François Choquette: Sorry, I will stop here.

[*English*]

The Chair: Thank you.

Go ahead, please. You can take one minute.

Mr. Joseph Castrilli: We indicated in our material that fracking is one of the areas that is exempt from reporting under the NPRI. Given the nature of the chemicals that are used in the fracking process, it's our view that fracking as an activity, and the chemicals it uses, have to become part of the NPRI. I think the explanations that the Government of Canada has given for not including fracking, including potential impacts on confidential business information, simply don't—pardon the pun—wash in the circumstances.

The Chair: Just to let everyone know, I have given all sides an extra minute for their questioning to ensure fairness.

I did want to have half an hour for committee business, but I understand that several people would like to ask another quick question. I will give each party three minutes for additional questions, but then I will have to ask everybody to quickly clear the room so that we can go in camera to do our planning.

We will start with Mr. Shields for three minutes.

Mr. Martin Shields (Bow River, CPC): I just have a couple of quick comments. First, we can't even agree on the adjective to describe our science. We have one saying “true” science and another one saying “sound” science. We can't even agree on what science is here, which I think is a fundamental problem we have. Having read a lot of science history, I know that it's your proven science until the other guy proves you're wrong, and he's the other scientist.

I think one of the things relate to what you said, Ms. Coombs, when you said that “one of the biggest problems we have is outcomes and the science” in terms of communicating with the public. To me, if you could explain that, it would be an important piece. I read every day about one scientist saying something, and then the next day there's another story in the newspaper that says something different. When we talk about what true science is, and what sound science is, it gets irrelevant to the public.

Ms. Shannon Coombs: As I had mentioned in my statement, we think there's a real opportunity for the government to provide more information to consumers in a meaningful way to let them know how the substances have been assessed, what it means to them in terms of their own health, and what the outcomes are, or what the government is doing for particular substances that have been assessed.

Mr. Bossio had mentioned earlier about 1,4-dioxane. It was assessed in CMP 1. It was in batch seven. It was deemed to be safe and not to be affecting human health, or that it was not coming into the environment.

When one of those situations comes up where you're raising a valid concern in your riding, sir—and I do appreciate those comments—there might be an opportunity for a mechanism under CEPA that you could use to provide information, if there are concentrations of that substance that are higher than what was assessed, for it to be reassessed under the provisions of CEPA.

● (1230)

Mr. Martin Shields: Let's go to the other side. When we were talking science, you said "science" a lot and you said "sound science". What's the difference between sound science and true science?

Mr. Darren Praznik: Do you want to answer it, Beta?

Mr. Beta Montemayor: I would say that science is science, and sound science is ensuring that you use the totality of the evidence before you.

The difference between the two is that you can have one scientist saying one thing and another scientist saying another thing. How do you balance that? From our perspective, we use the concept that it's not only the use of science, but also integrating that within thinking of the weight of evidence. The weight of evidence is really important. You have to take a look at the collective amount of relevant information, and you have to make a balanced determination collectively on all of that information, so that you can come up with a decision.

For me, the difference would be that sound science ensures the application of the weight of evidence in your decision-making matrix.

The Chair: Mr. Amos, we have three minutes.

Mr. William Amos: The tag line "better is always possible" has been used of late.

I address this to either Darren or Beta. If the legislation can be improved to protect Canadians more, and I think you're probably getting a bit of a sense that there's some interest in achieving that, what can be done? Can we agree the legislation is not perfect, and it could achieve more protective outcomes?

Mr. Darren Praznik: First of all, I think everyone agrees that no legislation in our system is ever perfect. When I put it in context, it was compared to what's happening in many other jurisdictions. In that context, we've achieved a lot, but one shouldn't rest on one's laurels.

When you pick up on the communication piece, one of the shortcomings is Canadians' understanding about what this process is and their ability to participate in it. This should be a system where we, as stakeholders, and Canadian environmental law protection organizations, and whoever else, should be easily able to submit our data, evidence, and arguments for consideration. Anything that improves the ability to make that debate robust, and open for reconsiderations where warranted, is important.

Mr. William Amos: I'd like to follow up on that.

Would you agree that Canadians' ability to participate fully, for example, in an upfront chemical evaluation process can be stifled when proprietary technologies and commercial interests around chemical technology are highlighted as being a reason for not providing all the information that the public might need to participate?

Mr. Darren Praznik: I'm not sure exactly what you're getting at. If you were in a pre-approval process, where you have to bring a new substance forward and you have to go through a process, you would have to bring sufficient evidence to meet the threshold to indicate its safety.

One of the other parts of this discussion is highlighted by this question of definition. I think there is a great difference in the terms that we use and of our understanding of science, risk assessment, and hazard. Rarely do we see any forum convened for our kinds of organizations to sit down and have that kind of discussion to get the nomenclature right. Part of that communication is about whether we are even talking about the same thing in the same way, so—

Mr. William Amos: I appreciate that communications could be better.

My question is, can the law be strengthened in any way that the chemical industry or the product industry would appreciate? We've had the forestry industry come forward saying, yes, you can strengthen the law in this way.

● (1235)

The Chair: Mr. Amos, I'm going to have to cut you off, unfortunately.

Mr. William Amos: Okay. I appreciate that. I'll simply say to CELA, then, that if there are any further written representations that they would like to make in regard to any of the testimony they've heard, that would be appreciated.

The Chair: Why don't we do that as a generic for everybody?

Hon. Ed Fast: For everybody, not just CELA.

The Chair: We'll make that as a general statement at the end.

I want to give Mr. Choquette one chance for three minutes, and then we'll be fairly distributed.

[*Translation*]

Mr. François Choquette: Thank you very much, Madam Chair.

I will continue with questions for the representatives of the Canadian Environmental Law Association because my last three-minute period went by quickly.

In the letter you sent to the committee, you say the following:

> Clarifying the Act with respect to what triggers the need for an assessment of a substance (other than the categorization process) because existing provisions of the Act including ss. 70, 71 and 75(3) are not adequate for this purpose;

You say that they are not adequate, or others said that and you added it to your letter. Could you elaborate on that? Why do the triggers seem to be inadequate?

[*English*]

Mr. Joseph Castrilli: The letter of May 12 was a summary of the testimony that was given by the environmental groups that appeared before the committee on March 10. The reasons why sections 70, 71, and subsection 75(3), among others, are not working adequately is probably something that is best provided by us in written form, as it's not a short answer. We would be happy to do that, sir.

[*Translation*]

Mr. François Choquette: I'm sure that the committee will also benefit from a written response you could send concerning triggers for assessing a substance.

In closing, I see a bit further down in the summary of the testimony that the definition of toxicity under the Canadian Environmental Protection Act, 1999, does not seem to take into account endocrine disruption. Is that correct? If so, what do you suggest?

[*English*]

The Chair: You have one minute.

Mr. Joseph Castrilli: I think we have two issues—or at least two—with that.

During the course of the categorization process, endocrine disruption and neurotoxicity were not human end points that were mandatory for evaluation in that process, but if there was data available on those points, it was considered during that process. If there was no data with respect to those end points, the government did not invoke some of the other provisions of the act, such as paragraph 71(1)(c), to require that either the information be provided or tests be performed. In that sense, with respect to the existing substances portion of CEPA and the CMP process, the evaluations that went forward left out neurotoxicity and endocrine disruption.

The same problem essentially applies in the context of new substances under section 80 and subsequent sections. There again, the opportunity to request that information is available to the government, but it often is not invoked, in part because of the language that appears not only in section 71, but also in sections 84 and 85—

The Chair: Mr. Castrilli, I'm going to have to cut you off. I'm sorry. We've run out of time. It was only three minutes, a very short time.

What is clear is that in response to a lot of the questions that were asked, other people wanted to speak as well. Hopefully, you've taken note of the questions that you wanted to give some testimony on but did not get a chance to, and you will then send those responses to us so that we can incorporate them in our work here.

I want to thank everybody very much for being here and also for joining us via video conference. It's been an excellent session. We're going to suspend shortly and move into the in camera meeting for committee business.

[*Proceedings continue in camera*]