



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Environment and Sustainable Development

ENVI • NUMBER 006 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, March 8, 2016

—
Chair

Mrs. Deborah Schulte

Standing Committee on Environment and Sustainable Development

Tuesday, March 8, 2016

• (1105)

[English]

The Chair (Mrs. Deborah Schulte (King—Vaughan, Lib.)): Good morning, everyone. We have a long agenda, so I want to make sure we get started right away.

At the subcommittee meeting—we had one by phone—we agreed as a subcommittee that we would permit two speakers to talk for an hour. I just need to make sure the committee is all right with that before we get started.

Is everyone okay with that? Okay. Thank you very much.

As chair, I find myself interrupting people, and I wanted to try to find another way. I do want us to be timely here. We have to be mindful of it or we run out of time, and I don't want to do that again. So, when I hold up this yellow card, it means you have one minute until your time is up. The white card means your time is up and I will cut you off.

Again, if you see this yellow card, please wrap up your question or your answer. I don't like interrupting people in the middle of what they're saying, because it can slow them down, and I don't want to do that when people are just wrapping up.

Are you all right with trying this for a little bit to see if it works out?

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Chair, I think that's good. We'll give it a good try.

I will say, though, that the card is more cream-coloured than yellow.

Voices: Oh, oh!

The Chair: Do you want green?

Mr. Nathan Cullen: Yes, cream; that's very cream.

A voice: [Inaudible—Editor]

Mr. Nathan Cullen: And a red card; I agree, a red card would be a lot more visible.

The Chair: But green means go, and at this point I'm trying to wrap you up.

A voice: The red and the yellow [Inaudible—Editor].

Mr. Nathan Cullen: Red and yellow; we'll give you some proper colours.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): He—

The Chair: We're not having a debate.

Ms. Elizabeth May: No, no; he said “cream”, not “green”.

The Chair: Oh, he said “cream”.

Mr. Nathan Cullen: Yes. To me that card looks a bit cream.

The Chair: You're absolutely right; it is cream.

Mr. Nathan Cullen: So cream is one minute and white is stop talking.

The Chair: Cream means one minute, and white means you've run out of time, so please wrap it up.

Mr. Nathan Cullen: Okay, got it.

The Chair: All right.

I think all of you received this morning via SharePoint.... I know we want to stop doing this, but I wanted to make sure you were checking out your SharePoint, so we have brought hard copies for you if you need them.

I'd like to introduce our two guests today. From the Department of Health, we have John Cooper, the acting director general of the safe environments directorate, and from the Department of the Environment, we have John Moffet, director general of legislative and regulatory affairs.

Welcome to both of you. I will turn the floor over to...John. It's John and John today.

Please proceed. Thank you.

Mr. John Cooper (Acting Director General, Safe Environments Directorate, Department of Health): Thank you very much, Madam Chair.

Please let me know if you cannot hear me or if I'm not speaking clearly enough.

We do welcome this opportunity to appear before the committee. We particularly welcome the opportunity to receive advice and recommendations pertaining to the Canadian Environmental Protection Act.

[Translation]

Madam Chair, I would like to make my opening statement in English, but I am prepared to try to answer any questions in English or in French.

[English]

I'm here today with my colleague from Environment and Climate Change Canada, John Moffet, who will be providing a detailed overview of the Canadian Environmental Protection Act. Before that, I would like to take a few minutes to talk about some of the key initiatives that we have undertaken under the Canadian Environmental Protection Act in order to better protect the health and environment of Canadians. To that effect, I'd like to talk briefly about the chemicals management plan and the air quality management system, both initiatives that fall under CEPA.

Health Canada works closely with Environment and Climate Change Canada in implementing parts 5 and 6 of CEPA related to chemicals and organisms. This work included the categorization of 23,000 existing substances that were in use in Canada prior to the creation of CEPA in 1988. That means substances that had not been assessed for risk to Canadians or the environment. Through the categorization process, 4,300 substances were identified by our departments as requiring further attention.

A key goal under the chemicals management plan is to ensure that by 2020 all of these 4,300 substances will have been assessed for potential risks, both to the environment and to health, and subsequently managed as appropriate. Between 2006 and 2016, our departments have assessed approximately 2,700 substances and have implemented or are proposing to implement risk management actions for approximately 300 of these. We are about to embark on the third phase of the chemicals management plan, with the objective of assessing a further 1,550 substances over the next five years.

The CMP, or chemicals management plan, has also allowed us to better integrate our departmental chemical programs and to continue to assess and, as required, manage some 450 new substances in Canada each year. So it's for both existing and new substances. It is recognized that even after we've assessed the 4,300 categorized substances, we will still need to manage those determined to be harmful to human health or to the environment and to consider new science that could trigger a need to reassess existing substances. So the work will continue. It needs to go on to ensure that we stay up to date and, as I said, reassess substances as the science indicates.

It is important to note that international partnerships and collaborations are key in being able to effectively and efficiently identify and manage chemical risks. For example, joint efforts pursued through the Organisation for Economic Cooperation and Development and the United Nations Environment Programme help us in sharing knowledge, expertise, and information on chemicals. It allows us to learn from others and equally for others to learn from us.

Canada has used its engagement on chemical issues to increase efficiency in program delivery through regulatory, scientific, and technical co-operation. In addition, Environment and Climate Change Canada engages internationally to manage substances that cannot be managed exclusively via domestic means. In a number of cases, we work to negotiate legally binding agreements, such as the Stockholm Convention on Persistent Organic Pollutants and the Minamata Convention on Mercury. We have to ensure that domestic measures are implemented to comply with the commitments and obligations under these conventions.

●(1110)

Under the Canada-United States Regulatory Cooperation Council our departments are actively engaged in aligning some risk assessment and management approaches with the U.S. environmental protection acts, specifically through the development of common approaches to identify priorities and to address emerging risks that are shared by both countries. This co-operation internationally is integral to our moving forward with the chemicals management plan and effectively managing chemicals in Canada.

Canada is also leading the development of a resolution on sound chemicals management at the 69th World Health Assembly this coming May. The purpose of the resolution is to broaden the health sector engagement in chemicals management domestically and internationally, with the goal of reducing the impact of chemicals on health.

I'm going to move from chemicals management to air quality, because I think that's another significant issue that we do address through CEPA.

As with chemicals, Canada has supported global action on improving air quality through the World Health Organization. Canada supported a resolution last year on addressing the health impacts of air pollution. The resolution recognizes the global public health effects of air pollution and calls on the World Health Organization to develop a path forward for enhanced global response to the adverse health effects of air pollution.

In 2012, the World Health Organization stated that approximately four million people around the world in the year 2012 died prematurely as a result of air pollution, particularly in vulnerable populations in developing countries. The WHO also reported in 2013 that there are approximately 900,000 premature deaths in Canada as a result of exposure to fine particulate matter.

Canada will contribute expertise on quantifying the health impacts of air pollution with the WHO and monitor and report ambient pollutant levels through our national air pollution monitoring system in Canada. We also work with Dalhousie University in monitoring air pollution globally through the use of satellites. This is intended to help the WHO have a better handle on air pollution globally.

We also have expertise in calculating the health and economic benefits of actions to address air pollution, and on raising awareness and building capacity on air health issues among the health sector.

Turning our attention to the air quality in Canada, air quality is generally good in Canada, but collaborative action is required to keep clean areas clean, and to promote continuous improvement of air quality. In Canada, Environment and Climate Change Canada is leading, with the support of Health Canada, actions to improve air quality with the objective of having a national approach to air quality management. It's called the air quality management system and it's under the authority of the Canadian Council of Ministers of the Environment. It is intended to replace the traditional patchwork of approaches we have used to manage air quality across the country. This is a collaborative approach involving our two departments. It involves all provinces, territories, and aboriginal peoples, and engages both industry and health and environmental non-governmental organizations in developing and implementing ways to improve air quality across the country.

More specifically, we focus on developing new, more stringent air quality standards called CAAQS, or Canadian ambient air quality standards, based on protecting both health and the environment. Each standard will have defined management levels beneath the standard that indicate levels at which action is required to prevent the air quality of a region from deteriorating, or with the intention of keeping clean areas clean.

• (1115)

It's not just a pollute up to standard; we have levels below that standard that require action to improve.

Under the leadership of Environment and Climate Change Canada new base level industrial emission requirements will be put in place as a backstop for provincial and territorial requirements to ensure reduced emissions. In addition, air zones are being set up across the country to engage governments, municipalities, and stakeholders in monitoring and managing local and regional air quality. This is a means to actually get people on the ground locally and regionally to be actively engaged in addressing the air quality of their environment.

In addition, Environment and Climate Change Canada, together with Health Canada, will continue to work with the United States to address the challenges of transboundary air pollution under the Canada-United States Air Quality Agreement. This has been quite an effective tool in reducing emissions. It was initially set up to look at acid rain, but it is now extended into a range of air pollution issues where we try to ensure consistency in terms of standards and approaches. However, our standards tend to be more stringent than those of the United States.

In summary, our work is based on collaboration, engagement, and consensus building, coupled with a solid foundation of science and research, and supported by strong federal legislation and particularly the Canadian Environmental Protection Act.

We do look forward to hearing your views and recommendations.

Thank you very much.

The Chair: Thank you.

Before I turn it over to Mr. Moffet, I would like to clarify a comment that you made. You said 900,000 premature deaths were

due to air pollution. I thought you said in Canada but I can't believe that.

Mr. John Cooper: Yes, in Canada.

The Chair: In Canada, 900,000?

Mr. John Cooper: I'm sorry. I added an extra zero. It's 9,000.

• (1120)

The Chair: Okay. Thank you.

Mr. John Cooper: Yes. In 2008 there was a report by the Canadian Medical Association that estimated there were 21,000 premature deaths per year associated with air pollution. Subsequent research has lowered that number somewhat. The WHO burden of disease study estimated that there were 9,000—sorry—premature deaths associated with particulate matter.

The Chair: You definitely gave me a heart attack there.

Thank you very much for that clarification.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Would it be possible to get a copy of the brief at some point? I didn't receive it anywhere.

We don't have it, correct?

The Chair: No. He's just making a presentation.

There will be the blues that come out that have word by word what's been said.

Thank you.

Mr. Mike Bossio: Would it be possible in the future to get these presentations beforehand? It's a lot easier to follow and learn from than hearing it now and having to refer to it later. How do you ask informed questions when you really haven't had the material to study beforehand?

The Chair: Just to be clear, we have had this little discussion before. Sometimes it's possible. Obviously, any presentation, if it's going to be officially distributed, needs to be translated. It gets to be a bit burdensome when someone is trying to come forward to make a witness statement. We are asking for it, but it isn't always possible. We'll definitely get it recorded in the blues so you will have a word-by-word account of what's said today. I'm hearing you. We are asking for them, but we don't always get them.

Mr. Moffet. We have 13 minutes. I just want to let you know where we are with the time.

[*Translation*]

Mr. John Moffet (Director General, Legislative and Regulatory Affairs, Department of the Environment): Like my colleague, I will make my presentation in English, but I would be happy to answer any of your questions in French or in English.

[*English*]

Like my colleague, we're very pleased to participate in this review. CEPA is an extremely important statute for environmental protection in Canada. We're looking forward to the results of your review and to contributing in any way that we can.

I have a fairly lengthy deck. I'll go through it. If you want to tell me to speed up, skip sections, wave coloured—

The Chair: I don't think we want to skip sections, but we'll try to expedite.

Thank you.

Mr. John Moffet: I'll provide a little bit of background. Health Canada was formed before the Great War. Environment Canada was formed in 1971. Until 1988, Environment Canada operated on the basis of using various statutes that pre-existed the department. In 1988, Parliament consolidated a number of statutes and parts of statutes into what then became known as the Canadian Environmental Protection Act. That act had a primary focus on pollution, but significantly on pollution from both an environmental perspective and a human health perspective. That, of course, remains the primary focus of CEPA today.

During the 1990s, CEPA 88 underwent a very extensive review by your committee's predecessor, chaired by Charles Caccia. The review resulted in a very comprehensive set of recommendations to enhance the act and strengthen it in numerous ways. The government provided a detailed response, and then effectively tabled a new bill, which in turn went through an extensive clause-by-clause review and resulted in CEPA 99. Since then, CEPA 99 has undergone a handful of minor modifications, a review by a House committee, and a parallel review by a Senate committee in 2006 and 2007. However, no subsequent Parliamentary reviews and no comprehensive set of reforms have been made to the act since it was introduced in 1999.

Environment and Climate Change Canada has two primary pollution statutes. One is the Fisheries Act, which contains a prohibition on depositing deleterious substances in the water. That's the primary statutory authority for addressing water pollution. However, for all other pollution, CEPA is our main statute. Of course, many other departments have other statutes that address environment and health risks. Most of those statutes are product focused. For example, Agriculture Canada and CFIA have a number of statutes that focus on seeds, feeds, etc. Our colleagues at Health Canada have the Food and Drugs Act and the Canada Consumer Product Safety Act, a lot of product-focused acts.

The way CEPA generally works is that if another act provides for equivalent environmental and health protection, CEPA stands down and the other act operates, which makes sense because that act has been designed specifically for that set of products. However, CEPA sets some basic requirements and allows the government to intervene in a wide range of areas.

We tend to think of CEPA as providing a tool box, a broad set of authorities to address a wide range of issues using a wide range of tools. In some cases, however, the act is a little more prescriptive and that's generally the case where Parliament has decided to use the act to bring into Canadian law a commitment that we've made internationally. I'll get to a couple of examples later in my presentation.

Now, for those of you who have attempted to wade through CEPA, or have even been deterred by the bulk of it, you'll know that it's an extensive act and it's a complicated statute. One way to understand it is simply by looking at the structure to determine

which chapter addresses what issue. Another way to think about it is what broad sets of authorities it contains, what tools it enables the government to use. A third way to understand it is as to what subjects or issues the government has used CEPA to address.

• (1125)

I am going to take you through all three, and I hope that will give you a good basis for understanding the statute.

Slide 5 gives you a summary of the main structure of the act. The actual table of contents is reproduced in annex B on slide 20. The front end of the statute gives some crosscutting authorities and some obligations related to requirements for transparency and public participation, some authorities for gathering information to determine what kinds of issues to address, and authorities for some of the tools that we use, objectives, guidelines, and codes of practice.

My colleague John Cooper has described the work the government does to address chemicals under the chemicals management plan. The legal framework for that work is primarily found in parts 4, 5, and 6 of CEPA, which are premised on this test of whether a substance is toxic. That is a term that is carefully defined in the act and is a much broader term than the meaning of "toxic" in normal parlance. It essentially means harmful to health, harmful to the environment, or harmful to the environment on which human life depends. It's a very broad definition of risk. The act separates what one might think of as chemicals or inanimate products, and animate products or toxic substances in living organisms, but basically the same regime applies to both.

Part 7 focuses on various specific sources of pollution. You can trace the history of some of those provisions back to pre-CEPA 1988. Nutrients provisions were in another statute and brought into CEPA at that time. Some of the air pollution provisions for vehicles, fuels, and engines were in other statutes and brought into CEPA. Other provisions in this part, as I mentioned earlier, are designed to address international agreements. There is a set of provisions about ocean disposal, which basically replicate the London protocol under the London convention. Another set of provisions addresses transboundary movement of hazardous waste and hazardous recyclable materials. Those are basically designed to enable Canada to comply with its obligations both under a bilateral Canada-U.S. agreement and under an international agreement known as the Basel convention.

We have fairly extensive authorities to address environmental emergencies, both to require planning and to take action. Part 9 allows us to address pollution from government operations, federal undertakings, and activities that occur on federal lands. Collectively, this is known as the federal house. It is important to have these authorities because although the jurisprudence is a little fuzzy, in general, one can say that many provincial environmental laws do not apply to the federal house. Whereas on most land in Canada an activity would be subject to a combination of federal and provincial laws, or federal and territorial laws, within the federal house, whether it's a federal activity or an activity on federal land, including aboriginal land, in general, most of those provincial environmental laws do not apply, so there is a gap that needs to be filled.

Then we have a very extensive enforcement regime.

• (1130)

All told, it's an extensive act and a powerful act. One of our previous ministers actually did wade through the entire act and commented after reading it that CEPA is a Ferrari. I'm not sure I'd go that far. I guess he was one of those rare politicians who are prone to hyperbole.

An hon. member: Oh, oh!

Mr. John Moffet: I'm glad somebody laughed. I had to try.

But the statute has extensive authorities and is used to address a wide range of issues.

Let me turn to the kinds of authorities we have under the statute.

Of course, environmental and health decision-making needs to be science based and based on good information, so the act gives us broad authority to conduct research. Indeed, it mandates a wide range of research on the parts of both Health Canada and Environment and Climate Change Canada. It also gives us various tools to gather information. In some cases, of course, a producer of a particular substance will be in a much better place to actually conduct a test to enable us to get the information to determine whether there's a problem.

In addition to that kind of information, we also need information about who's using and who's emitting substances and pollutants. We're able to gather that information to enable us to make informed decisions about whether to act and how to act.

I'll talk about the regulatory authority in the act. You will see there are authorities for the government, for the Governor in Council, to pass regulations with respect to virtually all of the issues the act addresses. There is authority to regulate substances that are found to be toxic, or in other words, that meet that test of harm to the environment, harm to health, or harm to the environment on which human health depends.

Similarly, we have the authority to set emission and design standards for air emissions from vehicles and from engines. We have authority to regulate fuel composition. That's important of course because the combustion of fuels can lead to air pollution and greenhouse gases. Also, when we set vehicle and engine standards, we need to ensure that fuel that can be used effectively with those new technologies is available.

You can see the rest of the list. There is a broad set of regulatory authorities.

The act is structured in a very reader-unfriendly manner. You'll see regulatory authorities scattered throughout the act, and then buried in the so-called miscellaneous section right at the back of the act, part 11, Miscellaneous Matters, are two provisions, 322 and 326, that authorize most of those regulatory authorities to include provisions for trading systems. Most people will have heard of air emissions trading, but we have actually used trading systems in five different regulations, not all of which are focused on air, so for renewable fuels, sulphur and gasoline regulations, and so on.

In a couple of places in this deck we've taken the liberty of identifying limitations in the statute. My colleague and I are going to be very careful here. I need to be very careful. We're not here to tell you what you should do. We're not here to tell you what the act should be focused on or indeed how you should amend the act, if at all. But we can tell you that the act addresses this issue and doesn't address that issue, and it's up to you to decide whether it should address that issue. We're treading the fine line between giving you the information you need and not usurping your authority or our minister's authority to make those kinds of judgments.

• (1135)

In the case of trading systems, the broad authority to develop trading systems that we've already demonstrated can be used quite effectively. However, we know from experience in other jurisdictions that in some cases effective trading systems would include features such as auctioning of permits, and we don't have authority to auction permits under CEPA at the moment.

Similarly, because most of CEPA is established under the criminal law head of power, we don't have authority under that head of power and under regulations that are developed under that head of power to impose automatic administrative penalties. However, we know that in some jurisdictions that have effective trading systems, it's a market-based system and the market works best in response to immediate, clear signals including penalties that are a bit different than can be available through a criminal penalty, which of course can be significant but can be a little uncertain in terms of whether it's actually going to be imposed, when it's going to be imposed, and what the amount is going to be.

In addition to regulations, there are a number of other tools or instruments that the act allows us to use to address risks. We have permit systems for ocean disposal, for transboundary movement of waste, and for exports of substances that are on the export control list.

We have something called pollution prevention plans. Basically, that derives from some very interesting work that was done in the 1980s primarily in the United States. It looked at energy efficiency and basically called into question the classic economic theory that if there is a piece of change on the ground, the rational actor will pick it up. Of course, while we all might think we're rational, we're not all-seeing and all-knowing, and any company is going to have limitations on its ability to identify all possible cost-saving opportunities.

In the case of energy efficiency, a number of initiatives in the United States basically required companies to undertake energy efficiency plans. They didn't have to actually do anything other than a plan to look at where their energy efficiency opportunities were. The result was overwhelmingly that companies adopted energy efficiency initiatives because they identified ways to save money.

Pollution prevention planning is the same concept. We'll tell you that there's an issue; we'll tell you what the environmental objective or concern is, and we'll require you to do a plan to look at ways within your operation to address that issue. If you say that you've done the plan and you're not going to do anything, you've complied with the law as long as you've done a plan. We've used this authority on numerous occasions and in no situation have we had to subsequently step in and regulate, because companies have consistently stepped up to the plate and said they would do what was needed to address the environmental issue. That was a tool that was introduced in CEPA in 1999.

We also, as my colleague mentioned, have the authority to issue guidelines, air quality guidelines and water quality guidelines. Those can just go out there to provide information. They can be taken up by provinces and incorporated into their permitting systems or be taken up by federal government requirements.

Similarly, we have the authority to issue codes of practice, which are basically a way in which a particular industrial process should ideally be undertaken. Again, those can just be published and put out there for good practice, or they can be incorporated into law either provincially or federally.

Moving to the robust enforcement regime that we have, just like risk management tools, the basic underlying goal in CEPA is to provide enforcement officials with a range of tools to respond to a situation appropriately so that you don't have only the two options of turning a blind eye or prosecuting.

- (1140)

Of course, prosecution is costly to the government. It may be overkill in the case of a relatively innocent mistake. It's totally appropriate in the case of an egregious offence or a repeat offender, but you need the intermediate tools to bring people back into compliance. That's the basic structure of the act, to provide a range of tools.

Slide 11 summarizes some of the authorities we have for intergovernmental co-operation. We have authorities for what are called equivalency agreements. If a province, territory, or aboriginal government is addressing the same issue and achieving the same outcome, then we can have an agreement followed by a Governor in Council order that essentially stands down the application of CEPA for that particular issue in that particular jurisdiction. There is no point having two requirements focused on the same issue.

We also have the authority to tailor regulations. Generally a regulation under CEPA applies nationwide, but we have the authority, subject to some conditions, to focus a regulation on a particular part of the country where environmental or health concerns warrant that kind of tailoring.

The act contains a number of requirements for consultation that go beyond the basic requirements for consultation when developing regulations or other kinds of formal instruments. It also has obligations to publish every proposed and final decision on the web-based environmental registry and obligations to consult on every one of those decisions with provinces, territories, and aboriginal governments through the CEPA National Advisory Committee, which Mr. Cooper and I co-chair.

The next six slides talk about the kinds of issues we have addressed under CEPA. My colleague introduced the chemicals management plan. That plan subsumes two broad sets of activities, one to address new substances and one to address existing substances.

What do I mean by that? Under CEPA 88, we drew up the domestic substances list. That was a list of all substances that were in commercial use in Canada above certain thresholds in the mid to late 1980s. Basically, if a substance is not on that list, it's considered new. It cannot be used in Canada until it goes through a pre-market notification process.

We have a regulation that indicates the information you have to provide, and then the law requires us to take that information and assess it within a certain period of time. Based on that assessment, the ministers can say that you're good to go and you can use it, or you can use it subject to conditions, or you can't use it at all.

If a substance is on that list, however—and there were 23,000 substances on that list—they are existing substances. People have made investments in using those substances. They are in all kinds of products and processes. Canada, like every other country in the world, confronted this issue in the 1990s. What do we do with these tens of thousands of substances that haven't been assessed but are in use?

Canada developed a set of requirements that is unique in the world. This was the categorization obligation. CEPA 99 set out some basic criteria and required the departments of environment and health to basically triage those 23,000 substances based on some basic criteria to identify substances that should be a priority for a full assessment.

We went from 23,000 to 4,300, and then developed the chemicals management plan in 2007, in which we made a commitment to complete assessments of those 4,300 substances by 2020. We're on track to complete that set of assessments.

Of course, if we identify a substance that needs to be risk managed following one of those assessments, then we develop a risk management instrument using one of the tools under CEPA.

Let me turn to air pollution and greenhouse gases. Sorry, I should speak to a couple of the issues on slides 12 and 13.

- (1145)

In CEPA 1999, Parliament wanted to distinguish among substances that were persistent and bioaccumulative and inherently toxic. This was a category of substances that had been identified by scientists for a long time and which had then been taken up by the International Joint Commission as a set of substances that needed particular attention and that should be virtually eliminated. The act establishes some obligations for virtual elimination.

The bottom line is that we are not able to implement all of those obligations for all substances that meet those criteria; moreover, some of those obligations are redundant. I'll give you one example. We're obliged to develop a ministerial regulation and a virtual elimination plan for substances that meet these criteria; however, when a substance meets these criteria, typically what we do is add it to the Governor in Council regulation known as the "prohibition of various substances". Well, if the Governor in Council has prohibited the use of this substance, there is not much point in also developing a requirement to do a virtual elimination plan and also have the minister promulgate a regulation. So, there are some issues, not with the underlying policy intent, but with the actual mechanics in the act.

Another issue we've started to confront more and more comes back to the explanation I gave you earlier, that the federal government addresses substances both through CEPA and through a number of product-specific statutes that are typically housed in departments other than Environment and Climate Change Canada, departments that have particular scientific expertise around the substance in question.

Again, think about the Feeds Act. The experts in agricultural feeds are the CFIA and Agriculture Canada, not Environment Canada. Health Canada has entire organizations focused on assessing and managing food, drugs, and consumer products such as baby bottles. What CEPA does is it says that if it's toxic and if the Governor in Council adds a substance to the list of toxic substances, then we have to manage the substance under CEPA, even if another statute might be the better one to use to manage the substance. I think we've effectively managed all of those substances, but we've run into some legal challenges in taking the most appropriate action.

The same thing applies to new substances. As I said earlier, the way CEPA works is that CEPA stands down if another statute provides for an equivalent pre-market notification and assessment requirement that covers both environment and health risks. A number of statutes, however, were developed pre-CEPA and may require pre-market notification and assessment of health risks, but not of environmental risks. We then have situations in which some products that are addressed under Agriculture Canada have equivalent statutory authorities, but some don't; some products that would logically be assessed by our colleagues at the Department of Fisheries and Oceans can't be managed under their statutes, so they need to undergo pre-market notification and assessment under CEPA, and a decision needs to be made by the ministers of environment and health, even though the actual work is done in another department. There's some wiring that could be sorted out, if you so chose.

Then, we have broad authority over greenhouse gases and air pollution. By most criteria, air contaminants are listed as toxic substances; all of the six greenhouse gases listed under the United Nations Framework Convention on Climate Change are listed as toxic. We can use the broad regulatory authority for toxic substances to address greenhouse gases.

We also have authority, as I mentioned, to address emissions from vehicles, fuels, and engines. We don't, however, have authority over certain types of sources. Small marine vessels, for example, remain a bit of an outlier.

● (1150)

As another challenge we have, we've given the example of wood stoves. We could address emissions from wood stoves because the emissions are toxic, but that would require placing a regulation on every user of a wood stove. A wood stove itself is basically an inert piece of metal. It's not toxic. At the moment, we can't regulate it because it's not toxic. It might be useful to have the authority to regulate the construction or operation of a product whose use generated or emitted toxic substances. To use the example of wood stoves, you'd be able to place a regulation on the manufacturers and importers, a couple of dozen, instead of the hundreds of thousands of users of wood stoves. It's just the way we regulate vehicle manufacturers and not every owner of a vehicle.

I sense that my time is waning.

The Chair: I want to let you know you have 15 minutes left.

Mr. John Moffet: If I'm going too fast, slow me down. I'm obviously happy to answer questions after my presentation.

I mentioned earlier that some parts of CEPA are designed to codify in domestic law international obligations.

Slide 15 speaks to two of those situations, where we have a very comprehensive regime that limits disposal at sea, basically in line with the international obligations under the London protocol, which placed very significant limits on what can go into the ocean for disposal. It's largely only inert products, and then only when the government is satisfied that disposal at sea is the environmentally best or preferable option.

Similarly, we have an extensive regime that regulates and establishes a permitting regime for hazardous imports and exports in transboundary movements of hazardous waste and hazardous recyclable material.

These international regimes, however, are not static and get updated from time to time as new issues emerge. Since CEPA was last amended in a comprehensive manner, there have been two amendments to the London protocol, in 2006 and 2009, and we have not updated CEPA to keep track with and to codify those changes to the international regime.

Going to the next slide on water, I mentioned that in terms of regulating or restricting water pollution, section 36 of the Fisheries Act, which is a broad prohibition, is a powerful tool and is indeed the main tool that Environment and Climate Change Canada uses to restrict discharges into water. We enforce the prohibition, and we have regulations dealing with municipal waste water, effluents from metal mining, and effluents from pulp and paper.

However, we do have two broad sets of authorities to regulate water pollution. One is under the toxics provisions. We have developed a couple of fairly minor regulations under those authorities. Those are quite old. In the last decade or so, the main emphasis has been on the Fisheries Act.

In addition, the main way in which we use CEPA to address water pollution is that under CEPA we can regulate product content in a way that will minimize water pollution. The Fisheries Act has a broad prohibition on putting stuff in the water, but what we can do under some parts of CEPA is regulate product design and content. An example would be the phosphorus content in detergents. Again, rather than regulate how everybody uses their washing machines, we can limit the amount of phosphorus that goes into detergents at the product design and production level. Phosphorus is a problem in fresh water because it can generate excess growth of algae and muck up the ecosystem.

In addition, as my colleague mentioned, we have broad authority to establish guidelines, which has been done extensively, both from a health perspective and from an environment perspective, and in many cases jointly with provinces and territories, resulting in guidelines that are issued under the auspices of the Canadian Council of Ministers of the Environment.

The final set of authorities I'll speak to are described on slide 17, and there are two. One is emergencies and one is the federal house.

- (1155)

Under emergencies, as the slide indicates, the government has authority to require the preparation of environmental emergency plans. We have a set of regulations that require the development of plans by a wide range of facilities that are using an extensive list of substances, the release of which could be problematic. There's a strong focus on prevention of pollution and on ensuring that potential sources of inadvertent release are well set up to respond to, manage, and mitigate those releases as effectively as possible.

In addition, scattered throughout the act are various authorities that essentially allow the Minister of Environment to intervene in the case of an emergency. The minister can require somebody who has been responsible for a spill or other kind of emergency to take action and incur costs. The minister can take action herself, or can compel the government to take action and then recover the costs of taking actions, which of course in some cases may be the most expeditious thing to do.

One technical issue we have is that in some cases you have an emergency; something gets spilled in the water, let's say. There's a bunch of things you could do, but you're not sure which one will work best. Ideally, if you're a scientist, you want to replicate the scenario in a controlled manner, which could mean putting a deleterious substance in the water. Even though you're doing the research for good reasons, that would violate the prohibition in the Fisheries Act for depositing deleterious substances.

Although we have a robust regime that allows us to respond to emergencies, we do have this challenge where in certain types of responses, we might be violating other statutory authorities. That is some kind of wiring that could be addressed in your review of CEPA.

As I noted earlier, we have authorities to address actions on the part of the federal house, although to date these authorities have been used quite sparingly. I think we have two regulations and one code of practice.

We also have a couple of other authorities that allow the government to take action to address specific sources of air pollution and water pollution that cause problems in a transboundary manner if, say, a facility in southern Ontario is causing air pollution and is affecting air quality in Michigan. These authorities have never been used. We have instead established nationwide regimes for water pollution under the Fisheries Act and air pollution under CEPA.

The final slide I'll speak to is the one with a bar chart. The main message is one that I've given to every new minister in the last 10 years and to our colleagues at Treasury Board.

With all excuses to our friends in other departments, like Transport Canada, I think Environment Canada and Health Canada are in a relatively unique situation from a regulatory perspective. The simple example I give is that no new mode of transportation has been invented in the last century. Of course we need to continue to update our transportation regulations, but we're not dealing with new modes of transportation. On the other hand, from an environmental protection perspective, we have not yet assessed all substances that are in use in Canada. Inevitably, we're going to find more that need to be managed. Inevitably the government, regardless of its colour or stripe, is going to decide that in some cases, regulations are warranted, or at least some kind of intervention is warranted.

Similarly, we're starting to implement the federal, provincial and territorial air quality management system that contemplates the federal government setting baseline requirements for numerous air pollutants.

- (1200)

Finally, of course, lots of potential action on greenhouse gas could be taken by the federal government. There are a lot of issues that have not yet been fully understood, assessed, or managed.

You see this growth in this chart. What I'm suggesting is that regardless of the particular predilection for intervention or non-intervention by whatever government is in power, we're likely to see a need to intervene on additional issues over time.

One other point I'd make is that this chart significantly understates the level of activity. This counts discrete initiatives, discrete instruments. A lot of what we do is to amend regulations. I gave you the example earlier of the prohibition of various substances regulations. It's one regulation that covers—I don't have the exact number with me—about a dozen substances. As we identify other substances that need to be essentially prohibited, instead of promulgating a new regulation, we'll add that substance.

Similarly, we regularly update the regulations that address air emissions and vehicle emissions from, for example, light duty vehicles. We're remaining in lockstep with our colleagues in the United States. Each time it's not a new regulation, so it doesn't count in the bar chart here, but it's a significant new activity undertaken by the two departments that adds an increasing level of protection to Canadians and the environment.

With that rapid and broad tour of the statute, I'll stop. As I said, we're both happy to answer any questions that you might have now or in subsequent sessions.

•(1205)

The Chair: Thank you very much to both of you for the detailed explanations and information. I like the fact that you identified where some of the challenges are that we can delve into as we move forward.

We're into questions. Our first questioner is Mr. Fast.

Hon. Ed Fast (Abbotsford, CPC): Thank you very much to both of you for appearing before our committee.

It's fascinating information that you've shared with us. Quite frankly, we would have loved to have you for even longer in terms of spelling out not only the challenges, but also the many steps that have been taken to address the environmental challenges we have.

I notice that on page 10 of your deck you mention we have a robust enforcement regime and that there have been recent amendments that have increased fines and added new sentencing and enforcement tools. That's good news. I'm assuming there's not a lot additional enforcement that you're looking for. Is that a correct characterization?

Mr. John Moffet: Yes, I think that's fair.

The previous government introduced what was known as the environmental enforcement act in 2009. That introduced increased fines. It introduced, for the first time in the world, the obligation to look at both use and non-use values of the environments that were impaired by a contravention. It introduced a requirement for a public registry of corporate convictions. It required that fines be paid into the environmental damages fund so that they could be used to protect the environment.

If you pushed hard, there are probably a couple of very detailed limitations that some enforcement officials have found that restrict their ability in certain cases. However, broadly speaking, we have a fairly new and modern regime which provides a wide range of tools that allow us to respond both in a measured way and also in a very significant way, if warranted.

Hon. Ed Fast: I think you'll find that some of the members at this table will say we have a robust enforcement regime, but has it been used robustly?

I'd be interested to hear about how active Environment Canada has been in actually using the tools that are available to them. I also note that it's not only prosecutions that are available to you, and assessment of fines, but you also have compliance orders. I assume those are used even more often to address situations where perhaps the heavy hand of the law is not appropriate.

May I hear your comments?

Mr. John Moffet: Environment and Climate Change Canada has a separate enforcement branch specifically organized to be separate from the program so as to give it as much *marge de manoeuvre* as possible, and it does indeed use the various tools in the way you describe. You can envisage a pyramid where the most common response is a fairly light one, such as for a one-time offender who just needs a nudge to come back into compliance, all the way up to prosecution, but indeed there have been a number of prosecutions under CEPA and under the Fisheries Act and other statutes.

One example that I can give you is from just last year in Alberta when a distributor of oil and gas was fined for one of the new regulatory requirements for hydrochloric acid. I'd be happy to send the committee a record of various enforcement interventions that we have undertaken, if that would be of interest.

•(1210)

Hon. Ed Fast: It would be very helpful, and not only the heavier enforcement measures but some of the lighter ones that have been implemented.

Perhaps I could ask another question as well. You mentioned the six greenhouse gases that are regulated, but there's a whole host of non-greenhouse gas emissions that are also regulated by you that are created by the burning of fossil fuels. To what degree has progress been made in regulating those and decreasing the presence of those within our airsheds across Canada, say, over the last 10 years?

Mr. John Moffet: The two departments under CEPA have regulated a couple of categories of sources of air pollution. One is vehicles, fuels and engines, major sources of air pollutants that in and of themselves are harmful to human health and the environment. Also, many of them are precursors to smog, which is a significant health problem. In addition, we promulgated regulations for certain emissions from certain products. We're regulating the design, for example, of various paints and various coatings to limit the extent to which they contain volatile organic compounds that are released after they've been applied. My colleague referred to the AQMS, the air quality management system, where the government is still in the process of developing the various baseline requirements that the system calls for at a federal level.

The Chair: Thank you very much. I'm sorry to have to stop that, because it is interesting questioning.

Hon. Ed Fast: That's why we need seven minutes.

The Chair: I know, I'm hearing you. We might think about changing it, but at the moment, we've made a commitment to stay with this.

Mr. Amos.

Mr. William Amos (Pontiac, Lib.): Thank you, Madam Chair, and thank you to Mr. Cooper and Mr. Moffet for a comprehensive presentation.

The committee was unanimous in agreeing to study this legislation with a view to making recommendations. I appreciate where the department is coming from in wanting to explain the nature and the scope of the legislation, what it permits in terms of regulatory measures and what it does not.

I'll start by simply asking, would the department with the authorization of the minister be willing to provide this committee with options and reflections upon opportunities for legislative and regulatory reform in light of the fact that the recommendations that were made back in 2006 and 2008 were not acted upon by the previous administration? That would be helpful, I feel, to this committee. Certainly times have changed in the past decade and we've come upon new substances that were previously not contemplated by the legislator or the department. I wonder if that would be something the department would consider.

Mr. John Moffet: At this point my advice would be that this request should be made of the minister. The minister may authorize officials to provide advice to the committee. The request for this meeting occurred fairly recently, so the discussion with both our ministers has simply been one of let's appear and share how the act is used. The ministers can decide whether they want to appear, whether they want to provide input, whether they want to make officials available. The challenge we have is decisions about legislation are made by the government. We provide advice to the government. I think we're restricted to telling you how the act works. Again, we can go so far as to say what it does and doesn't do, and then leave it to you to draw your conclusions, unless the minister directs us otherwise.

• (1215)

The Chair: You've just said what I was going to say, that we have to be careful, because they aren't the legislators. We will ask the minister if we want to have that information. That would be good, thank you.

Mr. William Amos: In terms of specific challenges in the implementation of this legislation, the members of the opposition have pointed to changes that have been made to enforcement. I wonder if you could point to any specific aspects of CEPA 1999's implementation that have proven to be problematic from the perspective not of administrative efficiency but in pursuing the public interest. Are there aspects of this legislation where, in the department's estimation, they are limited in terms of where they can go to prevent toxic substances from entering the environment? I might add to that, perhaps you can comment on the discretion that is built into this statute that really provides a fair degree of latitude for the minister to determine the toxicity of a substance. I wonder if that latitude has in any circumstance created an impediment.

The Chair: I may be wrong, but the way I'm interpreting your question is that you're asking the public servants to determine and let us know what they suggest we might want to make as changes. Is that what I'm hearing?

Mr. William Amos: No, what I'm asking is what challenges have they faced in the implementation of the act.

The Chair: I think that's fair.

Mr. John Moffet: I'll make a couple of points, if I might. The act does provide broad discretion to take action and to decide how to act. Consideration of how the act has been implemented and whether the use of the act has been effective is, of course, a completely appropriate focus for the committee. That's not one that government officials can comment on, I'm afraid. Of course, you have access to the Canadian public. You can canvass a wide range of views about

the efficacy or lack thereof of interventions or of decisions not to intervene on a range of issues.

You made a distinction between administrative efficiencies. I've tried to identify some administrative challenges we have, including how in some cases where it's obvious that action should be taken but the action is actually better taken under another statute. That's an issue we confront. An example is the wood stoves issue. Wood stoves are a source of air pollution, which affects people's health. We could address it under CEPA right now, but it would be completely inefficient to do so. I don't think I'm making any kind of political statement about the obvious inefficiency of regulating millions of individual wood stove users.

• (1220)

The Chair: I appreciate that. Thank you very much.

Mr. Cullen.

Mr. Nathan Cullen: Thank you very much, Chair.

Welcome, John and John.

I have a couple of quick questions to start. The last time we did this there were 31 recommendations from the committee. How many of those have been implemented?

Mr. John Moffet: That's a great question. I have an answer here.

Mr. Nathan Cullen: How about a specific question while you search for the answer?

The first recommendation was that the government should prepare a biennial report, a comprehensive report on the state of the environment. Does that happen?

Mr. John Moffet: It doesn't under CEPA. The report that the government has developed over the last number of years, which provides state-of-the-environment information, is promulgated under the Federal Sustainable Development Act. That provides information about environmental quality.

Mr. Nathan Cullen: The committee recommended that come out of CEPA. Again, back to the last time we did this exercise, there were 31 recommendations. Can you tell us how many have been implemented?

Mr. John Moffet: I can follow up with specifics. The ballpark number is about two-thirds. Some of the recommendations were for changes to the law. Obviously, we haven't implemented any of those. Some of them, such as to engage stakeholders earlier, we've done.

Mr. Nathan Cullen: What might be helpful for the committee, Mr. Moffet, as we prepare our study of CEPA would be a comprehensive list of what's been done and what didn't get done the last time we went through this. Does that seem like an acceptable process?

Mr. John Moffet: We can absolutely provide that to you.

Mr. Nathan Cullen: That's great.

I'm looking through a previous environment commissioner's report. Mr. Vaughan concluded that the enforcement program was not well managed to adequately enforce compliance within CEPA. I'm looking at an Ecojustice report from that time, authored by Mr. Amos, I think, which showed that over 20 years you had collected a grand total of \$2.4 million in fines. To put that into context, the Toronto library board sent out fines for \$2.6 million in just one year. It doesn't seem scalable, just in terms of some of the impacts that some of the environmental accidents and disasters—call them what you will—have had.

The number of your enforcement officers and inspectors has increased, but the number of inspections and warnings has gone down. Why is that?

Mr. John Moffet: I'm not sure that inspections have gone down.

Mr. Nathan Cullen: That was according to the environment commissioner, Mr. Vaughan. Is he wrong?

Mr. John Moffet: I don't know. I'll again commit to follow up and give you information.

Mr. Nathan Cullen: Okay.

I want to bring this down to real terms that people can understand. I want to turn to pesticide management. For some context, between 2001 and 2011, pesticide use in Canada went up 3%; insecticides use went up 42%, and the use of fungicides went up 114%. Conditional permitting went up 80% just in the last five years. Why are we doing so many conditional releases? Why are we allowing chemicals to be on the shelves for consumers, for farmers, when information is still missing, which is why release was conditional in the first place?

Mr. John Cooper: I have to apologize; I cannot answer for the pest management regulatory agency in terms of pesticide use.

Mr. Nathan Cullen: You're with Health Canada, correct?

Mr. John Cooper: That's correct.

Mr. Nathan Cullen: Does this have nothing to do with you?

Mr. John Cooper: We share assessments, but we have no involvement in how they regulate the use of pesticides.

Mr. Nathan Cullen: Yet you're the health department. The exposure of these pesticides to the environment and to human health is in your jurisdiction.

Mr. John Cooper: That's looked at through the pesticide management regulatory agency.

Mr. Nathan Cullen: Health Canada doesn't—

Mr. John Cooper: We do look at pesticides in terms of exposure to drinking water.

• (1225)

Mr. Nathan Cullen: Are there any concerns, then, with these conditional approvals?

Mr. John Cooper: Not that I am aware of, no.

Mr. Nathan Cullen: Okay. Only, it seems passing strange, because some of the things that are being conditionally approved have been known to have negative health effects on humans and the environment, and often it's through the water table that those are released.

Why is that not a concern for Health Canada?

Mr. John Cooper: Because any pesticide that receives a conditional approval or an approval and is potentially in exposure through drinking water is added to our list of priorities for assessment separately. We do develop guides for pesticides.

Mr. Nathan Cullen: Let's move over to air quality, which you deal with. Am I right?

Mr. John Cooper: That's right.

Mr. Nathan Cullen: Do you have the power to bring in restrictions on CO2 release? Is CO2 listed as a toxic in your schedules?

Mr. John Cooper: It's listed under the GHGs as a toxic. Health Canada focuses on air quality, air pollutants, and critical air contaminants, GHGs to some extent where there are actions taken on GHGs, where there are cost benefits or co-benefits associated with—

Mr. Nathan Cullen: Kitimat, British Columbia, has elevated CO2 levels. They're actually maxing out their airshed right now. The province has been waiting on the federal government, who has the enforcement powers to limit the emissions of SO2 into the environment.

Kitimat has a 60% higher respiratory illness rate than anywhere else in the province. Why haven't you done anything about this yet?

The Chair: We're over six minutes.

Mr. John Moffet: I don't think we can answer questions about why the government has not.... You'd have to ask the minister that.

The Chair: Yes. Unfortunately, we are out of time on that line of questioning.

Hon. Ed Fast: On a point of order, Madam Chair, there was a very specific question asked at the very beginning, which had to do with the 31 recommendations coming out of the 2006-07 report. There was quite a bald statement made by Mr. Amos that none of those recommendations had been addressed. I believe that Mr. Moffet was in the process of responding to that. Perhaps he could finish.

The Chair: He said that he's going to give us a summary on that and he's going to give us that information, so I think that we've had the answer on that. We'll be getting the answer sent to us after this meeting.

Mr. Nathan Cullen: Chair, if I may, just to understand the limits of what we can ask, from what the official just responded to, the government's choosing to act on a certain provision or not choosing to act on a certain provision is within the purview of testimony.

If we can't ask questions about why the government enforced on this occasion and not on that occasion, and we have to wait for a political response to each of those questions, that would make the review of CEPA with government officials nearly impossible, both to the benefit of the review of CEPA and to members' understanding of what's happening.

The Chair: I have been trying to figure out whether we're in the right line of questioning or not, so let me just read this from O'Brien and Bosc, so that it's very clear for everybody:

Particular attention is paid to the questioning of public servants. The obligation of a witness to answer all questions put by the committee must be balanced against the role that public servants play in providing confidential advice to their Ministers. The role of the public servant has traditionally been viewed in relation to implementing and administering government policy, rather than the determination of what that policy should be. Consequently, public servants have been excused from commenting on the policy decisions made by the government.

That's why we've been.... We're kind of balancing on the head of a pin here.

Mr. Nathan Cullen: As we always are. I have great respect for the role that public administration has to play in enacting government policy, but you just referred to the implementation and administration of government policy. The line of questioning that I had was around the emission of SO₂ with respect to human health. There is a policy and there is the question of the administration of that policy. I don't know how that steps out of bounds.

If I can't ask that, it makes the point of having public servants in front of us very difficult to—

The Chair: I'm hearing you. We are out of time on that line of questioning.

Mr. Nathan Cullen: I understand.

The Chair: I think we're going to have a discussion, because I do believe the questioning was appropriate when you talk about the implementation and administration, and that's where you were with it, but let's—

• (1230)

Mr. Nathan Cullen: The only reason I asked this was not in response to any interjection from you; it was a response from Mr. Moffet, who said that he couldn't respond to whether they administer the act in this case. That becomes challenging, because any regulation the government chooses to enact or not enact at any point simply becomes.... It's not an advice to a minister situation.

The Chair: We can come back.

Mr. Nathan Cullen: Great, I hope we do.

The Chair: All right.

Ms. Elizabeth May: Madam Chair, since we've broken from the cycle of questioning, would this be an okay time to ask, since the Liberals have offered me a question—

Hon. Ed Fast: Madam Chair, she has no standing to speak at this committee.

Ms. Elizabeth May: As a member of Parliament, I'm equal to all other members of Parliament and allowed to sit at this table—

Hon. Ed Fast: You need consent of this committee, Ms. May.

Ms. Elizabeth May: —and I'm asking for consent on the record to speak.

Hon. Ed Fast: No.

The Chair: Ms. May, could you hold—

Ms. Elizabeth May: Believe it or not, I took this bill through first reading. I worked on it in 1988. Maybe I should ask to be a witness. Perhaps that would be a better solution.

The Chair: We were going to potentially give an opportunity, but now is not the time. We have a list of speakers here, and I want to make sure we get through our list. Maybe there's an opportunity, but that has to be agreed to by committee.

Let's get back to the questioning. Mr. Bossio.

Mr. Mike Bossio: Thank you once again, Mr. Cooper and Mr. Moffet, for being here today and making your presentation. The information you provided has educated us to a certain level.

Under CEPA you are categorizing chemicals as to whether they're toxic or not. How many chemicals have been declared toxic of the 23,000?

Mr. John Moffet: I should know that. Sorry, we can give you the complete list of toxic substances. It's a few hundred.

Mr. Mike Bossio: Maybe I could ask, if you don't know what the list is—

The Chair: I don't think he said he didn't know what the list was. I think what he said was it's an extensive list. I want to make sure we're careful with how we state things on the record.

Mr. Mike Bossio: I asked how many chemicals. I didn't ask which chemicals.

Mr. John Moffet: Yes, fair enough. I do not know the precise number. We'll get you the precise number. There are 132 substances currently listed on the list of toxic substances. If I might mention one caveat in that some of those substances are broad groups of substances and some are individual chemicals.

Mr. Mike Bossio: Can you tell me, of those 132 substances, since they've been declared toxic, what has happened with those substances? Are they prohibited from being used in the environment now?

I know we talked about the virtual elimination list and other things in your presentation. In reading the previous report, they talked about how the virtual elimination list wasn't working effectively, and it was a total failure because the Governor in Council was... prohibition, maybe that should be the tool to be used, etc. I'm wondering if anything has happened to eliminate those chemicals from being used in the environment.

Mr. John Moffet: Yes, action has been taken on each of those substances. The addition of a substance to the list of toxic substances means there is a risk, and the use or creation of the substance will pose a risk to health and the environment.

In some cases, ministers and governments have decided the appropriate response is to restrict emissions of the substance by a certain per cent, or to restrict the composition of products in a certain way. The other extreme is to prohibit. In other words the response, and I'm not going to defend the appropriateness of the response, has been tailored to the perceived gravity of the risk.

Mr. Mike Bossio: What I'm getting at is that this was an identified issue back in 2006-07. Based on your report, it seems that it has not really been fully resolved as to the virtual elimination list and prohibitions and the different mechanisms to be used to prohibit toxic chemicals.

•(1235)

Mr. John Moffet: The challenges with fulfilling the specific legal obligations with respect to substances that are persistent, bioaccumulative, and inherently toxic remain. The statute hasn't been amended.

However, numerous substances that are persistent, bioaccumulative, and inherently toxic have been added to the prohibition of various substances regulations, so we have taken action on those substances. We have not, however, done everything that the law required us to do.

Mr. Mike Bossio: Okay.

Another key area that was discussed in the last report was under burden of proof. To me, it seemed to make a lot of sense. Right now, the burden of proof is on us to show that the chemical shouldn't exist. All of our resources go towards trying to prove that a chemical is or is not a toxic substance, rather than, in regard to the burden of proof, utilizing industry to prove that it is acceptable.

Has any action been taken on that categorization or on how that's determined?

Mr. John Moffet: Yes. Let me explain two things.

First of all, the process is quite different for new substances versus existing substances. For new substances, you can't use the substance until you give us information that allows us to make a determination. We make the final determination, but you have to give us the information to show that the substance is safe.

For existing substances, under the chemicals management plan, in the second phase, following the review, we explicitly set up a regime whereby we identified certain substances, basically adopted almost a presumption of risk, and then worked with the users and producers to demonstrate that the substance was safe. It was not a legal change, but a procedural and policy change that—

Mr. Mike Bossio: Is it similar to the one used in the EU that's called REACH?

Mr. John Moffet: No, the system we use is quite different from REACH.

Mr. Mike Bossio: Is it? Okay.

Mr. John Moffet: REACH is an extremely time-consuming process that requires extensive work on the part of users and producers, but that actually has achieved a lot fewer decisions than we've achieved under the chemicals management plan.

The Chair: Thank you very much. We can see how fast six minutes goes.

Mr. Gerretsen.

Mr. Mark Gerretsen (Kingston and the Islands, Lib.): Thank you, Madam Chair.

Thank you, gentlemen, for coming here today to share this information with us and to answer our questions.

There are two things I want to pick up on that Mr. Moffet mentioned in his presentation. After all, in our review, we are looking at how changes can be made to the act to better enhance our commitment to protecting the environment.

One thing that you've mentioned twice now is the possible regulation of commercial products that produce emissions and being able to regulate them during the production of the actual device. You used wood stoves as an example. I'm really interested in that. I'm curious to know if you could expand on that and give another couple of examples of devices like that.

Also, do you foresee any potential difficulties with doing that? Is there going to be criticism? I mean, there's always going to be criticism on everything, but what might be the potential challenges to that? Just give some off the top of your head.

Mr. John Moffet: Another couple of examples; I'm an extremely uncreative person. I'm sure we can give you more examples, but I don't have any off the top of my head. I apologize.

Hon. Ed Fast: Baby bottles.

An hon. member: Would that be an example?

Mr. John Moffet: I knew somebody would come up with one. Yes, instead of using CEPA to deal with the content of baby bottles, the presence of BPA was banned using the Canada Consumer Product Safety Act rather than CEPA.

Another example that my colleague has just given me is that of a portable fuel container. It can be a piece of plastic or a piece of metal. You can design it so that the lid seals effectively and there are no fugitive emissions, or you can have it like the ones at my cottage that don't actually seal effectively.

Because the product itself doesn't contain a toxic substance and because of the way our regulatory regime authorities are structured now, we couldn't regulate the way that jerry can seals.

•(1240)

Mr. Mark Gerretsen: Do you have no oversight of that, as it stands right now?

Mr. John Moffet: Under the toxic authorities in CEPA, we do not; under other authorities, under other statutes, perhaps. Now, under vehicles, fuels, and engines, yes, we can do that kind of thing, but for vehicles, fuels, and engines.

All I'm saying is that if there are toxic substances, including greenhouse gases, that are best regulated by looking at the way in which a product is designed rather than the way it's used, we don't have that authority now.

Mr. Mark Gerretsen: That's very interesting. I'd love to learn more about that later on, because I think there's great possibility there.

The other thing you talked about was auctioning permits. Is this basically the same idea as putting a price on carbon, whereby the permit goes to the individual who is willing to pay the most for it?

Mr. John Moffet: The trading systems in which auctioning is most prevalent are indeed greenhouse gas variants of cap and trade. When a government establishes a cap and trade system, you have to decide who gets permits and how to issue the permits. Do you issue them for free, sell them for a fixed price, or do you auction them?

From a pure market perspective, auctioning certainly has some advantages. I'm not suggesting that's the way a government would necessarily go, but many jurisdictions have chosen to auction at least some of the permits, because that allows the market to demonstrate the value of the permit. The person who needs it the most will pay the most.

Mr. Mark Gerretsen: I don't want to run the risk of making a comment that the chair will rule me out of order for, but I'm also very much interested, along the same lines of questioning that Mr. Amos and Mr. Cullen had, not with respect to the political parts of the review that was done in 2006 and I guess into 2007, but with respect to what came about from it, in terms of what was actually not a directive from the minister's office but what...

In the interest of doing a review now, it would be very useful to know the challenges with the previous review, so that we could, when doing it this time, understand how we can properly make sure that we don't fall into those same problems. Getting a good understanding of where we came from and what was or wasn't accomplished would be very useful for me. I'm not asking you necessarily to provide any comment on this, because I feel as though you may already have stated your case on that.

Mr. John Moffet: No, I think what I was trying to explain is that my colleague and I cannot tell you why a decision was made. We would be very happy to provide you with a table of all the recommendations and the way in which the government responded to those recommendations. If you see that no response was made and wonder why not, well, that's a different discussion. But I can give you the documentation so that you can see that two-thirds were implemented, and perhaps you don't want to bother pursuing those again.

Mr. Mark Gerretsen: Perfect. I know I'm out of time but, Madam Chair, I don't know whether this is something that requires an official request from the committee or whether it's something that the officials can just provide.

Mr. John Moffet: I'll follow up, absolutely.

Mr. Mark Gerretsen: You will follow up?

The Chair: You will follow up with that to the committee?

Mr. John Moffet: Yes.

The Chair: I think everybody would be appreciative of that. Thank you very much.

Mr. Eglinski.

Mr. Jim Eglinski (Yellowhead, CPC): Thank you, Madam Chair, and thank you, Mr. Cooper and Mr. Moffet, for coming.

Thank you for a bit of clarification, in your last question, about the 31 recommendations. I look forward to seeing those, especially those that were acted upon. There were indications here that nothing was done, and I don't quite believe that.

Anyway, you mentioned that under the aspect of enforcement of the regulations you have a very robust program. Then there were some comments made, I believe, that you only got a couple of million dollars' worth of fines. I'm not exactly sure of the full amount; I didn't listen to that.

Does your organization, in enforcement, work in a proactive rather than reactive way? I'm an enforcement type of guy, and I'd rather work with companies, organizations or people in looking at ways to remedy the situation with respect to pollutants, or something like that. Is there an active phase of your enforcement department that works in that way, rather than just going out and finding violators? Do they have a proactive way of working with them and trying to resolve a problem before enforcement is actually necessary?

• (1245)

Mr. John Moffet: I'll try to respond briefly, but I might suggest that if there is interest on the part of the committee in enforcement, that you might want to invite the chief enforcement officer to come and explain.

Very briefly, however, within Environment and Climate Change Canada, we distinguish compliance promotion activities from enforcement activities. We develop compliance promotion strategies for every regulation and every instrument and then go out and talk to affected parties about what they need to do to comply. The focus is generally on smaller businesses. Suncor doesn't need our help, but dry cleaners do.

Enforcement plans are developed on an annual basis. No matter how many resources we have, they're limited. We can't cover everything. On an annual basis, the department decides what to focus on and what not to focus on, keeping a certain proportion of our enforcement resources available for reactive actions that come up. But the proactive priorities are identified on a risk basis where the enforcement officials go out and proactively inspect and investigate, if needed.

I can tell you that last year, there were almost 5,000 inspections, 3 written directives, 562 written warnings, 78 environmental protection compliance orders, 10 tickets, 60 investigations, 37 charges laid, and 15 convictions obtained. We can give you that kind of information on a per trend basis if you want.

Mr. Jim Eglinski: I noticed your pollution prevention plans. Have you found that industry is working well? Are they accepting your standards, or are you finding certain segments of industry in Canada rebellious, in a sense?

Mr. John Moffet: Pollution prevention plans are one tool that we use. We don't use them in all cases.

There are numerous factors that go into deciding what kind of tool, including the seriousness of the issue. So, if you get it wrong, can you remedy the issue, or do you need to get it right in the first place? This would put you on the regulatory side of things. Another one is, what is the likely receptivity of the target audience? We don't throw out a P2 plan and hope that people comply. We generally talk to the affected parties and try to get a sense of whether there would be receptivity to the instrument. This, I guess, is one of the reasons they've been relatively effective. I think we've done a relatively good job in using them only when they're likely to be effective. They have been used for a range of issues, and they have been applied to a range of sectors in Canada.

Mr. Jim Eglinski: Good.

The Chair: Excellent.

The next questioner is Mr. Fisher.

Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.): Thank you very much, Madam Chair, and in the spirit of International Women's Day, I'd like to give my time to Elizabeth May.

The Chair: Is everyone all right with that?

Mr. Darren Fisher: It doesn't require a unanimous vote, right?

The Chair: Well, in most committee practices, it doesn't. If the member wants to give his time to somebody else—

• (1250)

Mr. Darren Fisher: I'd like to hear from her.

The Chair: —the practice has generally been that the committee is okay with that.

Hon. Ed Fast: Madam Chair, certainly the member has a right to cede his place at the table. That's perfectly within his right, and he can do that to any member of Parliament, but to actually continue to cede that without the appropriate notice and paperwork and have another member speak is inappropriate. I've never seen it done in my years here, and I've been here some 10 years.

Mr. Darren Fisher: I'm not sure how it's been done in the past, but I don't see—

The Chair: Do you want to cede your seat?

Mr. Darren Fisher: Sure. Today, yes.

Hon. Ed Fast: You have to provide paperwork to the clerk.

Mr. Darren Fisher: Is there something in the rules that states we can't share our time with another member of Parliament?

The Chair: Okay. I will read the rules, and then, fortunately, it is never, ever black and white. But the rule basically says, "Non-members are occasionally given the right to speak, however, following a decision by a majority of the members present or by unanimous consent."

We're hearing that we don't have unanimous consent.

Mr. William Amos: Let's take a vote.

The Chair: "...a majority of the members present or by unanimous..." Okay.

Mr. William Amos: Okay, one or the other.

The Chair: Okay, we'll take a vote.

All those in favour of having Ms. May speak?

(Motion agreed to)

The Chair: It's going to be a shortened time because we're going to be finishing up, so three minutes.

Ms. Elizabeth May: Thank you very much. I really appreciate it.

Thank you, Madam Chair.

Getting back to CEPA's origins, I think you presented it very well, John. It was a collection of other acts. We had the ocean dumping act. We had the nutrient provisions of the Canada Water Act. I'm trying to remember all of them. Of course, the main body of it was the contaminants act.

We really missed something, and I think this is relevant to the point that Nathan Cullen was making a moment ago. With regard to pesticides and radionuclides, although they were toxic chemicals, and although the effort at the time in 1988 was to have a comprehensive handling of toxic chemicals from cradle to grave, pesticides are only included in this act when they constitute waste. In other words, after they have no commercial value, they can be regulated under CEPA.

I want to ask whether in your time working with the department there has been a serious look and re-look at this matter of the different treatment of some toxic chemicals that are clearly highly toxic, clearly dangerous. Has there been an opportunity over the last 10 years or so—as I understand that's as long as you've been with the department—at relooking at this question of CEPA's carve-out, if you will, of radionuclides and pesticides?

Mr. John Moffet: I think the short answer is no.

Ms. Elizabeth May: [*Technical difficulty—Editor*]

Getting back to your point about regulation of wood stoves, it's been a while since I looked up these provisions. As I recall, in 1988 when the act was being promulgated, the minister of the environment at the time made sure that as a result of some of those plug-in heaters that have oil moving through them—they were a consumer threat—CEPA was designed to allow the recall of products like that.

Is that still in the act, and could that be used, by extension, to regulate wood stoves in the way that you've described as a gap?

It was a DeLonghi heater, something like that. They had to be recalled. The minister of the environment made sure that this act allowed for the recall of some products that were a toxic threat.

Mr. John Moffet: Sorry, I'm not familiar with that.

We've done pretty extensive analysis around this wood stove and jerry can issue. We've looked for ways and haven't found them. You may have identified one, and we'll look into it.

Ms. Elizabeth May: I'll look back at that.

The Chair: [*Inaudible—Editor*]

Ms. Elizabeth May: Oh, the cream card. Okay, Madam Chair.

The greenhouse gas provisions of part 4—correct me if I'm wrong—give the federal Minister of Environment and Climate Change broad sweeping regulatory authority for advanced planning for control of greenhouse gases.

Is that a correct statement?

Mr. John Moffet: No, sorry.

Part 4 allows the minister to require various entities—companies, institutions—to develop pollution prevention plans with respect to designated substances. The minister could require entities to do a GHG reduction plan.

• (1255)

The Chair: I'm sorry, but I have to cut that off.

Thank you very much for answering all the questions and giving us a good launch on this act.

I will suspend for 30 seconds to give you a chance to take your leave.

Thank you so much.

Mr. John Moffet: It was a pleasure.

The Chair: We had agreed to have 10 minutes for committee business. We have about four minutes. I'm going to get right into it, if you don't mind.

We were thinking we were quite pleased that the committee had identified an approach to go forward with.

I want to ask whether the committee is agreeing to have a press release. Normally press releases have been done after a report is finished and we're putting it out there.

I've had a lot of calls from people—I'm sure you may have had some as well—asking what we are going to be doing at the committee. I thought it might be helpful to put out our plan for the next little so that people know what the committee is doing. That's why I was thinking a press release might be useful. It's not anything earth shattering. We don't have a report to present, but we have an identification of what we're going to be tackling in the next several months. I thought it would be helpful to have that out there.

Do I have agreement from the committee that we put that out there as a press release? It's not so much me writing it. It will be done by the clerk and our analysts and then it will come back for agreement. It's not necessarily what I wrote, but whatever we think is appropriate.

Do I have general agreement that a press release could be helpful and that we would ask our staff to help draft something to be brought back to the next meeting?

Mr. Fast

Hon. Ed Fast: Thank you, Madam Chair, for bringing this back because it was sprung on us a little bit.

The Chair: Understood.

Hon. Ed Fast: I appreciate the way in which you handled that, because it is about collegiality at the committee table.

I don't think it's a common practice for committees to regularly issue press releases as a consensus of the committee. We're prepared to consider press releases on a case-by-case basis.

It's helpful if our analysts actually prepare the press releases. They have to be scrupulously non-partisan. If there's anything that smacks even just a little bit of partisanship, then you're obviously going to get at least one party at the table that says no.

We're not closing the door to it and we'll look at any proposed press release on its own merits, but in principle, we're not necessarily opposed to it.

The Chair: Okay.

I'm getting the sense that we think there could be agreement, depending on the wording, that we put something out to let people know what this committee has agreed to move forward on and that it could be helpful, and we will ask our very supportive staff—what do we call you?

Ms. Penny Becklumb (Committee Researcher): Analysts.

The Chair: We'll ask our analysts to help us draft something that will be completely non-partisan.

How's that?

Okay, that's great.

The next thing I wanted to announce to everybody is that the minister is no longer able to appear on April 12, but she is available on March 24 for the full two hours and she'll be speaking to the mandate and speaking to the estimates. I just wanted to make sure everybody knew that. It's a different—

Sorry, what was that?

Mr. Darren Fisher: It's a different schedule that day though, correct?

The Chair: We're not yet sure whether that day is going to be an adjusted day to look like a Friday, because it's the last day before Easter break and often they go with a Friday schedule. We're not completely sure what's going to happen. We tried to ask and we haven't got the answer.

Would the committee be prepared if that was true to sit on that day? If the House had question period at 11 a.m., we would meet after and have our committee meeting—

The Clerk of the Committee (Ms. Cynara Corbin): She's free from 11 a.m. to 1 p.m.

The Chair: She's free from 11 a.m. to 1 p.m., so she's coming.

Hon. Ed Fast: [*Inaudible—Editor*]

The Chair: I don't want to miss the opportunity to have her, so, in essence then, the committee is basically meeting from 11 a.m. to 1 p.m., because she is not free later. I'm just letting you know that is a potential conflict we may have. It's a Thursday, but we're going to have her here for two hours on that day and I'm letting everybody know.

I think that was it. That's really all we had.

We're going to have our subcommittee meeting right after this.

Thank you very much.

That's all I wanted to bring forward to everybody.

That ends the meeting.

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

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the Parliament of Canada Web Site at the following address: <http://www.parl.gc.ca>

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

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : <http://www.parl.gc.ca>