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Chair

Mrs. Deborah Schulte

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● (1535)

[*English*]

The Chair (Mrs. Deborah Schulte (King—Vaughan, Lib.)): I'd like to bring the meeting to order and welcome everybody.

It's a little bit different format from what we normally have. We're giving the Department of the Environment and the Department of Health 30 minutes for their statements. Then we'll go into questions for an hour and a half. Finally, we'll do 30 minutes of discussion ourselves in camera, I believe.

I would like to welcome, from the Department of the Environment, John Moffet, director general, legislative and regulatory affairs directorate; and from the Department of Health, David Morin, director general, safe environments directorate, healthy environments and consumer safety branch; and Jason Flint, director general, policy, communications and regulatory affairs.

The floor is yours.

Mr. John Moffet (Director General, Legislative and Regulatory Affairs Directorate, Department of the Environment): Thanks, ladies and gentlemen. We're glad to be here this afternoon. There has been a little bit of a break since we last spoke to you on CEPA. I know that you've had quite a full agenda since then, dealing with a number of other issues, but you have also heard from a variety of witnesses on CEPA.

We were asked by the clerk to focus our presentation primarily on an overview of CEPA—how it works, how it's structured, what we do under it—so that's going to be the bulk of the presentation. We're certainly happy to answer questions on any issue. I'm in your hands, Madam Chair, but I'm happy to be interrupted at any time, or we can finish the presentation and then answer questions.

The Chair: I want to say thank you because we were doing CEPA before we got really focused on protected spaces. This is like a CEPA 101 to give us an overview to help guide us in our decisions as we move forward with this study.

Mr. John Moffet: It's our pleasure. I am happy to be here, and I am happy to return, if the committee would find that useful.

I will attempt to go through this fairly quickly. Again, interrupt me if I am going too quickly or if there is an issue you want to focus on.

The purpose of the presentation is to give you an overview of CEPA, how it is structured and how it works, as well as to speak a little about some of the issues identified in the discussion paper that Minister McKenna shared with the committee.

I'll turn, then, to the structure of CEPA. Slide 4 illustrates the fact that CEPA is a very broad statute that is designed to give the government the authority to address a wide range of pollution sources. I know that, to date, the committee has heard primarily about the way in which CEPA has been and can be used to address chemical substances, but it also has a broad range of authorities for a wide range of other pollutants. Similarly, it provides a broad set of tools, various types of instruments and authorities, that can be used to gather information, publish reports, and that sort of thing. In addition, the act provides various duties for the government, throughout the statute, to guide the way decisions must be made.

I won't take you labouriously through the detailed table on slide 4. I think it's more of a heuristic device to illustrate that we have a lot of tools and authorities, as illustrated down the left-hand column, and they can be applied to a wide range of pollution sources, as illustrated by the top row.

I'll jump to slide 5. I am going to go through the various parts of the act and describe how they can be used, as well as through some of the issues that we have identified in the discussion paper that Minister McKenna shared with you. The first part of the act is primarily focused on administration, including intergovernmental co-operation. It requires the government to establish a national advisory committee, which Mr. Morin and I co-chair. That committee must include representatives of the governments of each province and territory, as well as up to six aboriginal governments, and those are defined in a very specific way. We are obliged to share with the national advisory committee every proposed decision made under CEPA. We do that electronically, and we also convene regular teleconferences to enable discussion of issues among members and with the federal government.

Part 1 also provides for administrative agreements and equivalency agreements. Administrative agreements are just what they sound like—they are work arrangements between governments. We may have an information collecting authority or an authority to take certain actions in the case of emergencies. The minister has the authority to enter into administrative agreements to allow a province, a territory, or an aboriginal government to undertake that work on behalf of the federal government. The federal law still applies; it is just being implemented by a province. We have a number of examples of these agreements, both under CEPA and under the Department of the Environment Act.

We also have authority for equivalency agreements, and those are becoming an increasingly important focus for provincial and territorial governments. The way equivalency agreements work is that they provide authority for the minister to enter into an agreement with a province, a territory, or an aboriginal government where the minister is of the opinion that the other government has a set of legal authorities equivalent to part or all of a CEPA regulation.

● (1540)

In that case, then, where an agreement has been completed, the government can then issue an order in council standing down that part or the entirety of a CEPA regulation in that jurisdiction. For example, last year the government stood down the application of a regulation that addresses greenhouse gas emissions from coal-fired electricity generating plants. We stood down the application of that regulation in the province of Nova Scotia because the minister had entered into an agreement with the province, recognizing that the province's set of legal authorities that it had put in place to phase out coal-fired generation in the province would achieve the equivalent environmental result as the application of our regulations. There was no point in having the two sets of legal obligations apply at the same time, so we stood down our regulation.

We've noted in the green boxes there are a couple of areas where these authorities could be enhanced. For example, I've repeatedly said provinces, territories, and aboriginal governments. Of course, in some cases other types of entities implement regulations. A good example would be offshore boards, which are joint creatures of provinces and the federal government. At the moment, we don't have the authority to enter into administrative agreements with offshore boards.

I described the test that we used for equivalency agreements as an equivalent outcome. There is no test in the statute, so it's ambiguous. For 15 years, we have had an agreement in place with provinces, developed via the national advisory committee, that that will be the test. It was the test that we used for the Nova Scotia coal-fired regulations. We introduced that test in the amendments to the Fisheries Act that were made in 2012, but CEPA could be made clearer if that were amended.

Moving to public participation, there are a range of public participation obligations on the part of the government, and rights on the part of the public throughout the act, but many of them are codified in part 2, which provides for publication of various types of information. We are, by law, required to maintain an online registry, the Environmental Registry, which provides notice of all proposed and final formal actions taken under CEPA. Regulations, orders, guidelines, agreements, etc. are all published online and available for public access.

There's also whistle-blower protection, authority for individuals to apply for investigations of alleged offences, and an authority that has not had significant use, and that is an authority to allow individuals to bring in environmental protection action. In addition to any comments that the committee may hear or may have on your own behalf about the adequacy of this full set of provisions around public participation, the discussion paper notes that the test for environmental protection action is very high. It authorizes individuals to bring these actions only where the alleged offence would cause or has caused significant harm, as opposed to any harm. Of course, somebody might violate CEPA, and it could be debatable how significant the harm was. At the moment there is this high threshold for individuals to be able to bring that protection action. The minister wanted this brought to the committee's attention to consider.

The next part of the act provides a range of information gathering authorities. We're now starting to get into some of the tools that the government can use for risk management. It also provides authorities for the government to establish registries, so a pollutant release inventory and a greenhouse gas inventory. It also provides authorities for the minister to promulgate environmental quality objectives, environmental guidelines, release guidelines, and codes of practice.

● (1545)

Section 9 of the discussion document identifies various improvements that could be made to this suite of authorities around information gathering, in particular. There's a reference to the very tight set of rules around confidential business information, which could be relaxed. There's a reference to the possibility of clarifying the authority of the Minister of Health. The Minister of Health, of course, shares in the responsibility for administering most of the act. However, most of the tools for either gathering information or changing behaviour are either joint tools of the Minister of the Environment and Minister of Health, or tools of the Minister of the Environment on her own authority.

In some cases, though, it may be that the issue is being addressed from a human health perspective. From strictly an administrative efficiency point of view, it may be appropriate to allow the Minister of Health to take the action without having having to come to the Minister of the Environment for concurrence. There are a variety of ways in which these information gathering and softer tool authorities could be enhanced, as described in the discussion paper.

The next part of the act, part 4, is described on slide 8. That codifies a tool that was introduced into the act in its last iteration. That tool allows the minister, for the purpose of managing a toxic substance, to issue a notice requiring an identified set of parties, typically businesses, to develop a pollution prevention plan.

The notice identifies the risk that the plan is to address and the objective of the government, and then says, “You have to develop a plan, and your plan has to tell us how you considered the issue and what you're going to do about it.” You don't actually have to do anything other than develop a plan, and what we've found is that this has been a very effective tool.

It's not appropriate in all cases. We don't use it in all cases. We use it in situations where we believe that, again, typically industry has the wherewithal to respond to the plan and to take initiative, and where it's most appropriate to give full discretion to the affected industy, to figure out how to solve the problem.

We have very robust reporting obligations under these plans. We provide annual reports to the public about the performance under these plans. In no case, to date, have we concluded that we need to take another step, in other words that the industry said, "Actually, we're not going to go as far as your objective." To date it's been a useful tool. Again, it is not the only tool in the tool box, but it's an example of a kind of tool that is not a traditional regulatory tool that CEPA provides for.

Then we get to the heart of the chemicals regime in the act. Of course, the information gathering and the pollution prevention planning authorities are all extremely useful for the assessment and management of chemical substances. The two core parts are parts 5 and 6. Part 5 deals with chemicals, and part 6 deals with living substances.

In both parts, we make a distinction between new substances and existing substances. A new substance is defined as something that is not on a list. That list was drawn up in the mid- to late 1980s of every substance that was in commercial use in Canada. The list has since been added to over time through the exercise of the new substances provisions. If you're not on the list and you want to introduce a substance into Canada, for any purpose, the law says you can't until you notify us and we conduct an assessment of the environmental and health risks associated with the use of the substance.

● (1550)

The act gives the government the authority to prescribe the kind of information that must be submitted and it gives the government authority to respond in various ways: good to go, good to go under certain conditions, can't use it at all.

Substances get notified under that process. The assessors assess the information, and if they give the substance a green light, then the substance can get added to the domestic substances list so that it no longer needs to get notified. That's one way in which the domestic substances list has grown over time, in order to ensure that it remains an accurate reflection of substances that are actually in use in Canada.

This does raise a couple of issues, however. One is that we actually don't have what we would consider adequate authority to take substances off the list. There are substances that we know are not in use in Canada, and we'd actually like to see notification before they get reintroduced, but they're on the domestic substances list, so they don't have to be notified.

Another issue is flagged in this green box on slide 9, and that is that one of the basic architectural principles in CEPA is that it will provide sort of a baseline reference for the assessment and management of toxic substances in Canada. However, if another statute that focuses on a specific set of substances provides for an equivalent regime for assessment of environmental and health risks, then CEPA can stand down and that other statute can take its place. It makes good sense, because we have purpose-built statutes for regulating seeds and feeds and animal welfare, etc., so where those statutes provide for health and environmental risk assessment, CEPA stands down. We have stood down CEPA to allow a number of other statutes to apply.

However, there are also a number of statutes that focus on specific types of substances that are old. Typically, the problem with them is that they provide for a health assessment and maybe a safety assessment, but not an environmental assessment. By law, we have to do the assessment of those new substances under CEPA, even though there's an entire legal regime to address those substances and, indeed, in many cases an organization—maybe the department of fisheries, maybe the department of agriculture, maybe the Pest Management Regulatory Agency—with all the expertise in those substances.

There are two ways to solve that problem. One would be to amend those statutes. That is easier said than done. There are a lot of reasons in many cases not to open up a statute. Another way to solve that problem would be to create an authority in CEPA for the Governor in Council to give a subset of the authorities in CEPA, the authorities around new substances, to another minister for the purpose of assessing a specific set of substances. If you had another minister with an organization that had expertise in a kind of substance, and a regulatory regime for most of the aspects of that substance, but they didn't have the authority to address the environmental risks, this would allow the government to give the full set of authority under CEPA so that we wouldn't have to do the assessment. What typically happens is that they do the assessment and we double-check it. It has to go to our ministers and they sign off. Really, what you want is for the organization that knows the substance to be doing the work.

We then turn to risk assessment and risk management. I won't go into this at length, because my colleague is going to speak to this at the end of the presentation. I would only say that on risk assessment, you've heard a lot, I think, both from myself in the initial presentation and from some of the stakeholders, about the chemicals management plan and the focus in that initiative on assessing substances that were categorized as meeting certain criteria in 2006. That is a major feeder of our risk assessment activities.

● (1555)

That took the 23,000 substances on the domestic substances list and said that about 4,300 of them meet these criteria. That means they need more assessment. That's, of course, a significant feeder.

There are a number of other feeders. We are obliged under section 75 to look at every substance that has been prohibited or substantially restricted by another jurisdiction in the world, including a province or territory.

A number of feeders contribute to our risk assessment activities. There is a test for what is, under the act, considered to be toxic, and that test triggers the obligation to manage a substance.

With regard to risk management timelines, at least for some substances, depending on the feeder through which they came into risk assessment, there are specific timelines after a substance has been found to be toxic. The ministers have to publish a proposed instrument within two years and then finalize an instrument within another 18 months. As I've mentioned, the act provides for a broad suite of tools, although as the discussion paper identifies, we're always trying to think about new tools and there's at least one that we think could be codified in the act.

Then, of course, another set of issues that has arisen is whether we can use the statutory authority of another minister to manage a substance that's been assessed under CEPA.

The way CEPA works, if you assess a substance under CEPA and find that it's toxic, then you're obliged to develop an instrument under CEPA to control the substance. In some cases we've concluded that something is toxic and it needs to be managed, but there is another statute, perhaps a different statute that the Minister of Health administers, for example, that is much more appropriate and tailored to the particular risk that we're trying to address.

Technically, the way CEPA is written now, we have to use a CEPA instrument. Something for the committee to consider is whether we could discharge the obligation to manage the substance by using a tool under another act. We have the same set of issues for chemicals and new substances, under parts 5 and 6. Part 7 is basically a compendium of authorities for a wide range of pollutants.

I'll highlight a couple of issues. One set of issues that occupies a fair bit of time in the department and that has become fairly significant in the case of environmental assessment decisions has to do with ocean disposal. For that, we've codified an international rule, the London convention, and the further detail provided by the London protocol, which addresses disposal at sea. Basically, the rules are that you can't dispose of anything at sea other than a very small list of substances that are codified in the London protocol and then repeated in CEPA, and even then you have to satisfy us that, basically, this is environmentally the best thing to do.

● (1600)

The Chair: Dr. Moffet, we're just over 25 minutes. It's excellent, but I just want to bring to your attention the time, because I know you said you would need maybe 30 minutes. If you need more, we'll see if the committee will accommodate that, but I just wanted you to be aware that we're at 25 minutes.

Mr. John Moffet: Okay, this will be my last example. There are a number of others that are referenced in the deck, but I think this is the most significant example.

We have two columns. The London protocol has been amended a couple of times, and we have not yet amended CEPA to keep up with the amendments in the international regime.

Another is an example that many of you would have been familiar with through the media. A private entrepreneur working through an indigenous community on the west coast wanted to basically seed the ocean. The basic theory was to encourage growth, plants, in the ocean, so they would sequester carbon. That sounds good, but we actually had no idea what the implications would be for marine life, for the way the ocean worked in terms of heating and cooling, etc. The proponent went ahead and did it, arguing that there was no prohibition. We've argued that the act is prohibitive. Indeed, the London protocol was subsequently amended to clarify that doing that is prohibited.

We're suggesting, however, that it not be left as ambiguous and that the issue be clarified in the statute.

I apologize for going on for maybe an overly long time. I'd like to suggest that the committee indulge us for a few more minutes so that my colleague can describe in a little more detail how we use the act for chemicals management.

The Chair: Rather than cutting you off, because I really don't want to do that, is it the will of the committee to give more time—

Ms. Linda Duncan (Edmonton Strathcona, NDP): I have a lot of questions.

The Chair: —or more time for questions? It's really about presentation versus questions. You'd rather have more time for questions?

Hon. Ed Fast (Abbotsford, CPC): Since it's the first time, I agree with going on for the presentations. It's really helpful to us.

The Chair: Okay, we'll try and not go too much longer.

Mr. David Morin (Director General, Safe Environments Directorate, Healthy Environments and Consumer Safety Branch, Department of Health): Okay. Thank you very much. I'll try to be as brief as possible.

From this point on, we're largely going to focus in on the chemicals management plan. We've heard through some of the stakeholders' submissions that a lot of people spoke about the chemicals management plan, and really what launched it was some of the work that was done under CEPA and that's required under CEPA. I won't say that the chemicals management plan is all of CEPA or vice versa, but there's significant overlap between the two.

Essentially this all started, as Mr. Moffett said, when we took a look at substances on the DSL. We did a triage of all of those legacy substances that were added and were not subject to the new substances notification regulations. We came up with a list of 4,300 based on criteria, such as persistence, accumulation, inherent toxicity, and potential for exposure. We then had to go through and do screening level risk assessments on those 4,300 to see if more action was required from a risk management perspective, or if they were generally okay. If more action is required from a risk management perspectives, then we proceed down the road of adding substances to schedule 1 and taking those necessary actions.

For the chemicals management plan, it started in 2006. For the risk assessments, we're about two-thirds of the way there. There's some form of an assessment to the draft or final on about 2,700 substances, and we have that last tranche of about 1,500 substances that we are moving forward with in the remaining five years. That will bring us up to March and April of 2020 to have that exercise completed.

Over the years, we've had a lot of questions on how we do risk assessments of substances. We could do risk assessments for individual substances. We take one individual chemical substance, we take a look at the exposure of that substance and the hazardous properties of that substance, and ultimately we come up with an element of risk. We determine whether that risk is of concern either from an ecological perspective with specific individual ecological organisms, to the environment upon which life depends, or to human health. We pick from one of those three as we move forward.

What do we consider in terms of doing this? We consider ultimately the properties of a substance, its presence in different media—so air, water, soil, indoor air—and the range of effects associated with that. We then combine them.

I think an interesting point worthwhile noting—and we heard this in some of the comments that were raised through various submissions—is about vulnerable populations. I think it's important to note that we do consider vulnerable populations in this. We take a look at things from a human health perspective with children and pregnant women. We do take a look at exposures and routes of exposures associated with those most vulnerable populations.

We also look at persistence and bioaccumulation. This is an issue we've been faced with over the past few years. The persistence and bioaccumulation regulations that we do have are ultimately based on science of the nineties. Science has evolved since then. This could be an area for consideration. Does this have to be updated? We have now noted that there's accumulation not just in lipids, but also in proteins, and different jurisdictions around the world have adopted different levels. This is stuff for consideration as we move forward.

The other thing I'd like to raise is that I mentioned initially that we could do individual one-off assessments, so one chemical at a time. While we don't really do what we call alternative assessments, we have done grouping assessments over time. We've looked at chemical substances and grouped them based on their structural similarity and their use profile. Could they be used more or less interchangeably? We have done some element of assessment along those lines, particularly under the CMP, and that has allowed us to be more efficient in the number of substances that we assess, but also to be more inclusive of the fact that some of the exposures can be cumulative over time.

● (1605)

This is slide 21.

I think this is another question that we get. People will ask us, do we have tunnel vision? Are we uniquely focused in on those 4,300 substances that were identified by DSL categorization?

The answer to that is no. While that is a large focus of our efforts, we do have what we call “a triggers document” that focuses in on different pathways to identify substances that should be considered either for assessment or for reassessment. If you take a look at these boxes, you'll notice, for example, there's emerging science. We have new science that was pulled together. This is something that we could consider with regard to a certain class of substance.

Section 70 of the act requires people who have information to reasonably believe that a substance could be toxic to submit that information to us. We routinely get submissions on that.

Internationally, we work very closely with the partners at the OECD and the U.S. EPA, so there's always a sharing of information there, so data from either domestic or international organizations and review of decisions in other jurisdictions. Sometimes we see trends through the new chemicals program. We see certain classes of substances being notified and we see if there are any linkages that could be made to substances already on the DSL. That helps them inform the science as we move forward with that.

There are also CMP assessment activities. So maybe we did a one-off assessment activity on one substance, now we're doing a class of substances. We may want to bring in these other substances, and we'll have a richer data set to help inform what the risk associated with that substance is.

There's also a significant new activity notifications, what we call the SNAcs, and that is ultimately a tool that is implemented on a substance, and that allows us to say, we're good with this use, but if you want to use that chemical for another use, you have to notify us of that use. As we get that information, then we get a sense of appreciation of the additional tox data that could be submitted, as well as other uses. It allows us to go through and maybe look at other decisions that we've made in the past.

I think the question that a lot of stakeholders have had and a lot of partners have had of us is, so you do this and what ultimately does it result in?

We have publications available on the chemical substances website. A 2015 data review was done to make a lot of this transparent to stakeholders. It reveals about 2,600 substances that were flagged for various reasons. We took a look at those and put certain filters, if you want, or certain criteria to say, okay, there could be a high-hazard profile to it, is it even in commerce in Canada and in what quantities? We took a look at it, and of that we flagged about 260, so about 10% of the substances that we flagged, and we said, those ones require a bit further merit.

If you're wondering how we broke those down, there were about 195, of them for which we said we should probably have further data gathering activities on those, so routine updates in terms of what their commercial status is. That's going to be a mandatory information gathering under section 71 of the act. There were 28 of them about which we said we have to integrate those with our ongoing risk assessments, based on some of the information that was flagged. So we've added those in moving forward with it. There were 27 of them about which we realized that activity is going on internationally in other jurisdictions, let's get a sense of what's going on, what conclusions they're coming to and let's follow that, so we're aware. All that to say, of those 2,600 we're actively following, there are 10% of them for which there are going to be further active follow-ups on.

In the interests of time, I will skip to slide 26.

Here, we're sort of in the annex, and it's probably worthwhile noting stakeholder engagement that we've done on the chemicals management plan. I must say that when we do meet our international partners, this is something that they are very surprised with, the degree of stakeholder engagement that we have on the chemicals management plan and the way we involve our stakeholders.

Naturally, under the act, we make decisions, we publish a draft risk assessment, a draft risk management document, etc., and there are mandatory 60-day public comment periods on that. But above and beyond that, we have many different points on which we involve stakeholders. We have early stakeholder engagement many months in advance, notifying stakeholders that we will be assessing or taking a look at certain classes of chemicals. We publish notices of intent with lists of substances that enable industry to contact their parent companies abroad, or their foreign suppliers, to say, we are likely going to need data on these substances.

● (1610)

Over the past two years, we have had four multi-stakeholder workshops that were organized, which were open to any stakeholder who wanted to participate. At those, we introduced some of the work we're lining up as we move forward with the chemicals management plan. We described the assessment activities, the risk management activities, the information gathering activities. We got a lot of valuable input from participants in those workshops. They are attended by stakeholders from industry and human health and environmental NGOs.

We also have more formal engagement mechanisms. For example, we have a CMP stakeholder advisory council that consists of aboriginal participants as well as industry, NGO, and some advocacy groups. That is ultimately to provide the government with advice on how the chemicals management plan is being implemented. This committee has been ongoing since 2006 when we launched the chemicals management plan. It's a very valuable committee. It provides us with that input. We use them as a sounding board.

We also have the CMP science committee that I think is incredibly valuable. We have had that under different forms since almost the beginning of the CMP. That is a science advisory body. We have experts from academia, from the NGO community, from other regulatory agencies, who come forward and provide us with expertise on specific questions that we may have. John spoke about CEPA NAC, or the national advisory council.

I guess the other is on slide 27, which focuses in on some of the international engagement. I mentioned that earlier on, but I can't overestimate the importance of a lot of these partnerships, either work that's done with U.S. EPA, with the European Chemicals Agency, other members of the Organisation for Economic Co-operation and Development, which have various task forces under there, such as the hazard one, the exposure task force. These all help us strengthen a lot of our assessment techniques, our modelling techniques, that are used to have robust approaches that are internationally recognized.

My apologies for going a bit over time. Thank you.

● (1615)

The Chair: Thank you very much.

There's a lot here. Obviously we'll get to questions.

Kicking it off will be Mr. Amos.

Mr. William Amos (Pontiac, Lib.): Thank you to our witnesses. I appreciate the care you've taken in giving us that broad overview. This is a complex statute.

I first want to touch upon the issue of environmental protection actions. I'm going to be kind of quick, because I'm most interested here, not in getting an education but getting evidence on the record.

Mr. Moffet, you mentioned the issue of the significant harm standard and the number of hurdles required for this public participation aspect to be used. I would assume you would include in that the investigation requirement, the reasonableness requirement, around said investigation.

I guess for number one, I'll ask for just a yes or no.

Has there been sufficient litigation before Canadian courts in relation to this citizen suit provision?

Mr. John Moffet: No.

Mr. William Amos: At the time when this law reform aspect was brought about in CEPA, were there concerns that there would be the floodgates of litigation opened?

Mr. John Moffet: I was an external counsel to the committee at that time, not working for the government. Certainly, some witnesses expressed that concern, others did not.

Mr. William Amos: So concerns were expressed, but it wasn't a unanimous view.

In order of magnitude, are we talking about two, 10, or 20, a hundred? How many litigation initiatives were undertaken, roughly, in relation to this environmental protection action?

Mr. John Moffet: None.

Mr. William Amos: None.

Mr. John Moffet: This provision has not been used.

Mr. William Amos: Would it be fair to say that, as a mechanism for the achievement of public participation and accountability, this mechanism hasn't been particularly successful?

Mr. John Moffet: You can draw whatever conclusion you want. All I can tell you is that it hasn't been used. That may be because there hasn't been a need, or it may be because it's improperly designed. Again, I'm not here to give you judgments. That's for you to decide.

Mr. William Amos: Thank you. I appreciate that, and I do appreciate that one could draw the conclusion that the fact that there has been zero usage of this environmental protection action, that the statute has been perfectly applied, and there have been no situations where chemicals.... I understand.

I wonder if Mr. Morin would have any comments in relation to that.

Mr. David Morin: No, thank you.

Mr. William Amos: Is it valuable, in your estimation, to have public participation through this mechanism? Is this potentially a very useful check on the executive authority, which CEPA provides?

● (1620)

Mr. John Moffet: Again, I think we're straying into questions that are not appropriate for us to answer. Our job is to tell you how the act is structured, how it works, and how it has been used. It's for you to decide whether it's appropriately structured or whether it applies appropriate checks on the executive. I think you're asking us to answer questions that we may have personal views on, but not in our professional capacity.

Mr. William Amos: Sure, I appreciate that, Mr. Moffet, and I'm not trying to put you in an inappropriate position. The answer you provided already on the usage is perfectly adequate.

Shifting now to the National Pollutant Release Inventory, it's accessible to Canadians online. For instance, if an individual is looking to purchase a property, are Canadians able to search online through the NPRI and determine what pollutant releases are ongoing in that general vicinity; for example, through the use of postal codes?

Mr. David Morin: Absolutely, you have a full option. You could go in there. You could search. I can't remember offhand the different search mechanisms, but you could do it via mapping. It has query functions you could enter online. I can't remember if you can enter a postal code or not to search it, but there is a full range of options. If you're interested in a property in a certain area, you could enter that and see what's around there.

Mr. William Amos: Thank you.

Mr. Moffet seems to be shaking his head in the negative.

Mr. John Moffet: Specifically, at the moment, there's no postal code search function.

A voice: There is.

Mr. John Moffet: There is one now? Okay, I guess we're constantly updating the search function, so there's a postal code search function as well as a basic GIS overlay, which allows you to target any area of Canada, as Mr. Morin explained, and then expand as far as you want. So my apologies for misleading you.

Mr. William Amos: Thank you for that. Actually I would commend the government on that change. It's very helpful. The United States has had that for some time, and it enables all sorts of private actors to make good decisions around whether they want to purchase properties, for example.

Mr. David Morin: If I could just add to that, we have a Google Earth application, which is pretty neat, if you want to take a look at it.

Mr. William Amos: I'll let my kids know. Thank you.

In relation to animate biotechnology, which is actually discussed at section 2.14 of the May 2016 discussion paper, is it the case that the federal government previously considered a stand-alone regime for the assessment of the risks related to animate biotechnology, and if that's the case, could the departments involved please provide the written materials on what was previously considered? I know we can do an access to information request, but I'd rather not go through that process.

Mr. John Moffet: You are delving into history. I know that there were—

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): He's into your time.

Mr. John Moffet: No, not to our knowledge, but we can check and get back to you.

Mr. William Amos: Thank you.

The Chair: Great, thank you very much. We appreciate that.

Go ahead, Mr. Fast.

Hon. Ed Fast: Thank you to our witnesses.

And by the way, Madam Chair, I think we should have these witnesses back closer to the end of our study, because their information has given me new perspectives on some of the challenges we face.

On the NPRI, we've had some witnesses, one in particular I recall, who raised the issue of toxic pollution in Ontario compared to some of the U.S. states, and that has been used as a pretext to support toughening up CEPA.

This is my question for you. Is it appropriate to compare the two? If not, why not? If so, why?

I have just one follow-up question to that, so you have them both. Does CEPA already contain the power to regulate air emissions? That's just so we have it on the record.

Mr. John Moffet: I'll try to address those issues. My colleague may want to supplement the answer.

I think inter-jurisdictional comparisons are always useful to determine how a jurisdiction is doing and whether or not there are lessons to be learned. Specifically your question is, can we compare performance as reflected under the NPRI with performance as reported under statutes administered by certain U.S. states? There I would suggest that what would be appropriate to do, as in any comparison, is to ensure that you're comparing apples to apples and oranges to oranges. The particular comparison that was provided to the committee—and we'd be happy to follow up with an objective assessment of the numbers—compared the full set of releases that are reported under the NPRI, which includes emissions to the atmosphere, direct emissions to water, and off-site releases, which are basically taking something and putting it in a waste disposal facility, which counts as a release in the NPRI. That's different from a reported emission to the environment under, for example, the New Jersey toxics reduction initiative.

While I think the main point of comparison in the presentation was to New Jersey—indeed, we have long tried to benchmark ourselves against New Jersey, which has an extremely effective toxics initiative—I would suggest that the data that you were presented with didn't compare apples to apples and therefore provided a rather large number on the Canadian side compared to a lower number on the U.S. side.

Again, what we'd be happy to do is give the committee the data, and not in a kind of defensive manner or explanatory manner, but just breaking down the data so that you can see emissions to air and emissions to landfill sites compared to....

● (1625)

Hon. Ed Fast: That would be helpful.

Mr. John Moffet: And your last question was...?

Hon. Ed Fast: That was power to regulate air emissions.

Mr. John Moffet: We have a number of authorities to regulate air emissions. First of all, many air pollutants are on the list of toxic substances, so we have authority under part 5 of CEPA to use the full set of CEPA tools—regulations, P2 planning notices, guidelines, codes of practice, and tradeable instruments—to regulate or otherwise control emissions of air pollutants that are considered to be toxic substances. In addition, we have authority under part 7 to regulate emissions to the air from vehicles, engines, and fuels. We have exercised authorities under all of those parts.

Hon. Ed Fast: Thank you.

I'd like talk about vulnerable populations.

In the minister's letter to the committee, I believe it was dated sometime in May, there's a passage referring to vulnerable populations. The letter discusses why the term could be incorporated in the preamble of a new act or a revised act, but there are some suggesting it should be incorporated in the body of the act.

Can you tell me whether you have a preference, and then, if so, why?

Mr. John Moffet: Again, I'll just speak briefly about that. I'm not going to give you a preference; I'll give you some considerations.

Hon. Ed Fast: All right.

Mr. John Moffet: First of all, as my colleague explained, Health Canada, which assesses health risks, already does consider vulnerable populations. Of course, as members of Parliament, you may want to provide for more certainty that it will be done.

Putting it in the preamble would provide some general guidance but no mandatory obligations. Is that strong enough? Putting it in the statute would establish an obligation, so we could ensure that Mr. Morin's successor continues his good work and doesn't leave it up to his successor. On the other hand, a possible unintended consequence could be that you would then require assessments in every case to look at vulnerable populations, even when we don't need to do that to make a decision that the substance is problematic. We can stop the assessment, and we can move on to controlling the substance, so that's a consideration.

Do you want to add anything?

● (1630)

Mr. David Morin: No, that pretty much summarizes.

The Chair: We have run out of time.

Hon. Ed Fast: I didn't see that red card.

The Chair: You know what? I got busy listening and I missed the red card.

Ms. Duncan.

Ms. Linda Duncan: Thank you to both of you. It's interesting information, but I wish I had half an hour to ask questions, so we'll probably need to have another meeting.

My first question is to Mr. Morin. There are two unique mandatory duties under CEPA that you don't see very often in legislation, certainly environmental, and they're mandatory duties on your Minister of Health. Under both sections 55 and 45, where information comes to her attention that there may be a relationship between toxins or air pollutants and illness or health, the minister is required to act. She is obligated to act, so I have two questions for you.

Has there ever been a study initiated by your minister on the health impacts of coal-fired power on Canadians? I'm not aware there has been. The Canadian Medical Association issued a report on that. As a result, Alberta has acted. The federal government, as far as I'm aware, has done nothing.

The second study under those provisions is one that the first nations in Fort Chipewyan have been requesting for decades, and that is a health study on the relationship between the air pollutants from the oil sands and the health effects they're suffering.

I would like to hear why there has been no action on that mandatory duty, on either of those two issues.

Mr. David Morin: In response to your first question, I am not aware of work that was done with regard to an assessment of emissions from coal-fired power plants on humans under that section of the act. I know there are certainly regs in place for coal-fired power plants—

Ms. Linda Duncan: Provincially.

Mr. John Moffet: Maybe I can step in. I can't speak to assessments or reports that have been done under Health Canada, and we may need to follow up on that. Mr. Morin has only relatively recently moved into the position, so we can't confirm.

However—

Ms. Linda Duncan: Okay, rather than waste some time, we could follow up on it.

Mr. John Moffet: May I just clarify? There are federal regulations regulating the emission of greenhouse gases—

Ms. Linda Duncan: I'm talking about mercury.

Mr. John Moffet: I've got it. Just bear with me for a second. The regulatory impact assessment statement for those regulations does provide an estimate of the human health benefits of reducing greenhouse gases, including the possible indirect benefits from the reduction of mercury emissions.

I'm not fully satisfying you. I'm only trying to explain that some information is available publicly.

Ms. Linda Duncan: Thanks. So that's one assessment that has been done, but I'm bringing those to your attention, and I would appreciate it if you could answer whether the minister has ever triggered her mandatory duty under those two provisions. If she has, I would appreciate it if you could provide to the committee information about when that has been triggered, since CEPA was enacted, and what those initiatives were.

On my second question, CCME, sometime between 2000 and 2004, identified mercury, which is a neurotoxin, as the top priority for action by all governments, so that's my particular concern. Can you tell me, Mr. Moffet, is that list still there? Is mercury still the top-priority chemical identified by the CCME, and therefore Environment Canada and Health Canada would be moving on that?

Mr. John Moffet: I'm not aware of a list from CCME. We can certainly provide you with two things; one is a list of publications from the Minister of Health pursuant to sections 45 and 55.

Ms. Linda Duncan: Thanks.

Mr. John Moffet: Second, I think it would be appropriate to provide the committee with a list of the various risk management activities that the federal government has undertaken to reduce exposure to the emission of mercury and methyl-mercury in Canada.

Ms. Linda Duncan: I'm only interested in coal-fired power.

My second question is under part 9, and I appreciated your presentation on that, saying that federal lands and aboriginal lands, particularly reserve lands, are not subject to provincial legislation.

Since that part of the act has been enacted, my understanding is that very little has been done to fill that gap. Can you tell me if the department is making it a priority to move to make sure that we have a regulatory regime similar to the provinces or territories for federal and aboriginal lands, and particularly reserve lands?

● (1635)

Mr. John Moffet: I think the answer is more of a Government of Canada answer. In budget 2016 the government committed a fairly significant amount of money—I don't have the figures off the top of my head—to address solid waste management and waste-water treatment facilities on reserves. For as long as I've been involved in the issue, those two issues have routinely come out at the top of the list of problems, by no means exhaustive, and the government has made a commitment to address those issues.

The second point I'd make is that, more recently, the Minister of Environment indicated to a parliamentary committee that she had instructed the department to conduct a review—I'm going to be careful about my words here—of the status of the gap, so that work is under way.

Ms. Linda Duncan: Great. Thanks.

I just have one other quick request for something that everybody would like. Can you give us the names of the aboriginal members on both the health committee and the national advisory committee?

The Chair: For any question we're looking at here, all of those great things that were asked, it's understood that the information will be shared with everyone on the committee.

Thank you very much. That's great.

Mr. Fisher.

Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.): Thank you, Madam Chair. I don't think I'll need all of my time, so I'll be happy to pass it on to someone else.

I'm interested in significant harm versus harm—and maybe you can correct me if I'm wrong—and the fact that it comes across as possibly being open for interpretation. Can you give me a little more detail on how you would register significant harm versus harm? One person's significant harm might be another person's harm.

Mr. John Moffet: I would agree that the act doesn't define “significant”. However, I think that, as a matter of fairly routine statutory construction, and the fact that you have in two places in CEPA a reference to significant harm, whereas the term doesn't appear anywhere else, a routine statutory interpretation would suggest that there's a higher standard. The act does not determine exactly how high or how much higher that bar is, and therefore it is a matter of wide open discretion.

The first place it appears is in the private action. As I explained to Mr. Amos, that's never been used, so it's never been tested. The other place it's used is in the provisions related to establishing a threshold for regulating emissions associated with fuel content. We have issued regulations and have not been challenged, so we've passed the test. I can't tell you exactly what the test is though.

Mr. Darren Fisher: It seems as though that's a problem with CEPA, that there would be the ability for someone to interpret that at different levels. I think that's something we'll have to look at to see if we can get it fixed.

You talked about Governor in Council assessing a specific list of substances and checking to see who has the authority to assess the risks. I'm wondering about the ability to assess the risks. How much work, how much science, how much effort is going into determining whether some of those substances pose risks? Is that something the government is doing? Who does that legwork to determine whether there's actually a substantial risk?

Mr. John Moffet: I was describing the fact that CEPA says that any new substance that comes into Canada has to be notified under CEPA for an environmental or a health assessment. Then there is a fairly robust regime established under CEPA to allow us to specify what information has to be provided, the timelines under which a decision has to be made, and the kind of recourse the government can have, the kinds of decisions the government can make, depending on its assessment of the information.

The act also states that if another statute provides for an equivalent assessment regime, then that statute can be put on a list under CEPA and then the CEPA obligations don't apply, the authority under the other statute applies. For example, the Seeds Act is administered by the minister of agriculture and is on that list. That means that from a legal perspective there is a full set of legal authorities that are equivalent to the new substance obligations under CEPA, specifically for seeds. So there is a statutory regime that's fully administered by the Department of Agriculture and Agri-Food and no assessment for seeds has to be made under CEPA.

In some cases we have acts that don't provide for a fully equivalent regime but you have a minister and a department or an agency that is familiar with the issue. The Food and Drugs Act does not provide for the environmental assessment of food and drugs so we can't schedule the Food and Drugs Act. A new food or drug also technically has to be assessed under CEPA.

● (1640)

Mr. Darren Fisher: Who is assessing the risk?

It's not so much the jurisdiction of who has the responsibility to do it. Who is physically doing it?

Mr. David Morin: The new substances program covers new chemicals. We do have an MOU in place, for example, with DFO.

Mr. Darren Fisher: Okay.

Mr. David Morin: When we received notifications for certain aquatic organisms we relied on DFO's fish science expertise to do that assessment. I was in Environment Canada when this was done. Environment Canada administers the reception of the notification; we take a look at its completeness; we have an MOU with DFO that establishes roles and responsibilities. We take care of their science knowledge, their expertise in that area, and from that they do the assessment. We work with them, we explain how the regulations work so the assessment is framed within the context of the regulations, and then we implement the next steps as we move forward. But in that case we rely on other government expertise.

The Chair: We're moving on to Mr. Eglinski.

Mr. Jim Eglinski (Yellowhead, CPC): Thank you, Madam Chair.

Thank you to the witnesses for appearing today.

A number of witnesses have talked about the need for greater public participation. Can you explain again what opportunities exist now for the public to have meaningful interaction with you, and do you think there is need for more than what we're seeing currently?

Mr. David Morin: In terms of public participation under the act, we have mandatory public comment periods at critical points, both on the risk assessment side, as well as on the risk management side. Typically, those are implemented or operationalized as 60-day public comment periods.

We get the comments in, consider them, adjust our products as necessary, and provide a summary of the public comment as well as a response. That is made available on the website.

Beyond those official public comment periods, we actually have much more on the go. Whenever we're undertaking assessments or thinking about undertaking a certain tranche of assessments, we have stakeholder information sessions in terms of here's what we're thinking, these are the substances, these are the approaches, this is how we plan on grouping these substances, and these are some of the assessment methodologies that we're considering. We get some input from the stakeholders, consider it, and come back to them. There is a lot of back and forth.

Once we've identified what our framework is, we will move forward at that point in time, saying, “Okay, here's what we're doing. These are the substances.” We then officially engage stakeholders with those substances. Stakeholders could be either from an NGO side, or from an industry side, so there's a lot of early engagement even before we generally start official information gathering. So before we issue a section 71 notice under the act, we will have that very early engagement.

From that point on, there is an incredible amount of back and forth on some of these substances. Some have more, some have less, but there is a lot of stakeholder engagement.

As I mentioned in the presentation, we have the CMP stakeholder advisory council that consists right now of 23 members—a broad mix of stakeholders who provide us with a range of advice on the implementation of the CMP.

Also associated with this is a biannual publication. By biannual, I mean every six months. A lot of stakeholders have said, “You're doing an incredible amount of work, but it's buried somewhere on this chemical substances website. Is there some way that you could quickly pull together a 10-page document that describes what you've done in the last six months and what you plan on doing in the coming six months?” So we've pulled that together. It goes out generally in June and December, plus or minus a month. It really provides stakeholders with that update.

We generally receive positive feedback from them. As I said, that publication is something that was implemented as a result of stakeholder requests, so we definitely work with stakeholders on a lot of this.

● (1645)

Mr. Jim Eglinski: If you determine that a certain chemical or air pollutant is non-toxic, for example, can a group of people or individuals have an automatic review of that if they do not believe that the information you are presenting is right?

Mr. David Morin: Essentially, our first step is to publish a draft that's open for a 60-day public comment period. People provide us with data, and sometimes just their opinions. Ultimately, what we need is science data, some piece of evidence, so we can say, "Oh yes, you know what, we didn't consider this. This is new science or something we just weren't aware of." We factor that in.

In some cases, as we have gone from draft to final, we've adjusted our conclusion based on data that was provided. Sometimes even after we've published the final, new data becomes available. We make our conclusions at a snapshot in time based on the information that we have. Science continues to evolve. Monitoring continues to evolve. So as that data becomes available, we factor it in, and sometimes we've been known to revise our conclusions.

Mr. Jim Eglinski: How's my time?

The Chair: You have just over a minute.

Mr. David Morin: There's also the option for a board of review, if people want.

Mr. Jim Eglinski: Who triggers the review?

Mr. David Morin: The board of review is...

Mr. John Moffet: The answer is that it depends. The act provides that the minister may establish a board of review in response to a request. There are two or three types of decisions where if there's a request made for a board of review the minister shall establish the board. In most cases, however, it's discretionary on the part of the minister.

Mr. Jim Eglinski: Does that happen often?

Mr. John Moffet: Under the current act it's happened once. A few years ago a former minister of the environment convened a board of review to look into an assessment decision, or to review an assessment decision regarding a certain chemical substance.

Mr. Jim Eglinski: I must be just about out of time. Thanks, Madam Chair.

The Chair: Mr. Gerretsen.

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

My first question is with respect to identifying potential toxins. Under CEPA you use a risk-based approach. We've heard other testimony before this committee about a hazard-based approach, and I'm curious if you can define what you see as the difference between the two, and the pros and cons. I'll start with that.

Mr. David Morin: Essentially, our risk-based approach takes a look at the hazards of a certain substance. Is it a carcinogen, a genotoxin? Is there lethality or impacts to, say, fish or other forms of ecological organisms of interest, or trees, or something like that? So we take a look at that and we characterize what the hazards of a certain substance are. We then take a look at the exposure side of it. The first question we will often ask is, is the chemical even in commerce in Canada? In some cases the answer is no, it's not in commerce, in which case it would be subject to the new substance notification regulations. If it is on the DSL, though, just not in commerce, it means that there is potentially no exposure to Canadians at this point in time, but it can come into commerce.

What we do then from an exposure side is take a look at what the sources of release are, assuming it is in commerce in the country, how ecological organisms as well as humans could be exposed to the chemical, and what the exposure levels or the doses are in terms of people being exposed to the substance. From there, we will draw upon a margin of exposure from the human health side and say, are we safe or are we not? From the ecological side we look at a risk quotient, but ultimately we compare exposure concentrations to concentrations that are known to cause effects. When we talk about concentrations known to cause effects, we also build in there application factors to get it down to a level that would probably be safe, to a level that we feel would provide a certain buffer. We call them safety factors.

● (1650)

Mr. Mark Gerretsen: You're explaining the risk assessment portion of it.

Mr. David Morin: Yes.

Mr. Mark Gerretsen: Are you confident that's the best way to do it?

Mr. David Morin: There are multiple ways out there. There are some jurisdictions that do hazard-based approaches— Canada, the U.S.

Mr. Mark Gerretsen: How do you define the hazard-based approach?

Mr. David Morin: Ultimately, you have certain hazard end points, or certain values that are used. Once you trigger those values, a certain hazard—

Mr. Mark Gerretsen: That's like they have set the bar.

Mr. David Morin: —flag is associated with that, whether or not there is any exposure to that substance or not.

Mr. Mark Gerretsen: As I said, other individuals have come forward to suggest that we should be using a hazard-based approach instead. Are you confident that the risk-based approach is the more prudent manner to do it, that it would provide, at least in your expert opinion, the most benefit to Canadians?

Mr. David Morin: I'm not going to directly answer your question. However, I will say—

Mr. Mark Gerretsen: You should be a politician then.

Mr. David Morin: I was learning from my colleague here, Mr. Moffett. I will say, though, that we have assessed certain chemicals that are in commerce...highly hazardous, relatively well managed, with good stewardship practices in place. Hence there is not that exposure. You'll notice on certain outcomes of our risk assessments we've identified that, and we've said, "Okay, we're good with the way this use is, or this activity is. We will apply the significant new activity provisions of the act to that substance so if it is used for anything else, you have to notify us and we will evaluate that use."

Another mechanism that's used is our DSL, so an inventory update for substances on the DSL. Under the CMP, we've operationalized that now; every four years we go about doing it. In the past two rounds, with any substance that we've assessed that we want to see how the use pattern of that substance, or the commercial status of that substance evolves over time, we subject it to that, and that way we're able to monitor it.

Mr. Mark Gerretsen: Okay.

On page 21 of the slides, you talked about how the multiple pathways can be assessed or reassessed, and you have eight of them there. Is any one of those dominant or any couple of those dominant?

Mr. David Morin: It's a good question. I think it largely depends on the year. We have a continuous inflow of data under section 70 of the act. There's science that's emerging at various times. We rely on the new chemicals program.

Voice: [*Inaudible—Editor*]

Very true. With experience over time we've definitely seen that when you hit one of these triggers, you hit more than one. Imagine that internationally something's happened and at the same time scientists, whether academics or government scientists, are monitoring the substance in the environment. Then we have a call with our colleagues internationally, and they ask, "We have this issue, are you guys facing it?" Usually, we will trigger a lot of these.

● (1655)

The Chair: I think the last one we're going to have time for is Mr. Shields.

Mr. Martin Shields (Bow River, CPC): Thank you, Chair.

Thank you to the witnesses today.

I remember the time with measurement REACH. We heard a little bit about REACH and how good they were. That's directed by one set of industries in Europe. Do you have any comments about REACH and what it does, compared to what we do here in Canada?

Mr. John Moffet: I'll make a couple of observations. First of all, both the REACH program and the obligation in CEPA to categorize and then assess categorized substances were designed to address the same issue. The issue is that, since the 1990s, most developed jurisdictions in the world have had a fairly similar new substances program. Starting 25 years ago, all countries said, if it's new, you can't use it until you show that it's safe, essentially. However, everybody started in 1990 with a legacy of thousands of substances that were in commerce, some of which had been assessed primarily for health or safety reasons—food, drugs, and so on—virtually none of which had been assessed fully, for a full set of health and environmental risks.

The challenge for everybody was where to start. In Canada, we knew that our list was at least 23,000 substances. In the U.S., I've seen estimates of a typical factor of 10 times. Canada was actually the first country in the world to establish an approach, to codify an approach. I'm not making a comment as to whether it's the best approach or not, but we were the first. We took a hazard approach and categorized the substances strictly based on certain hazard characteristics. Are they persistent? Are they biocumulative? Are they inherently toxic? Another factor looks at potential for exposure. If they met those hazard characteristics, then we'd have an obligation to assess them. It is a risk-based assessment. We moved from 23,000 substances to 4,300; and we've committed to finishing the 4,300 by 2020.

Mr. Morin has described the kinds of assessments we do. To manage, in some cases we actually get into an approach that is very much like REACH. REACH is an acronym for the registration, evaluation, authorization, and restriction of chemicals. Under REACH, first, there is a broad set of obligations to register. That took 10 or more years to put in place. Then government officials have an obligation to evaluate. If they evaluate and certain substances meet certain hazard criteria, they go on different authorization tracks. If they meet certain hazard criteria, the authorization test is much harder. It doesn't mean it's prohibited, but the test becomes, basically, that you can't use it unless you can show that there is no good alternative.

We have a similar approach. We assess, and then we have the prohibited substances regulation. If substances meet criteria that basically suggest they shouldn't be used in Canada, we put them on that regulation. What that regulation then says is, essentially, we know you've been using these substances and this could cause a lot of trouble, so you can apply for a permit to continue to use the substance for three years but only if you can show us that there's no technical or economically feasible alternative. If there's an alternative, you have to stop now. If there isn't and you can prove that to us, you can get a permit to continue to use it for three years, and we apply that to those substances that we add to the prohibition regulations. There are differences, but there are also broad similarities in the overall approach to management.

The one final point I'd make is that our regime was implemented at least a decade before REACH came fully into place, and we're much farther down the track of working our way through that full legacy of thousands of existing substances that had not been assessed.

● (1700)

Mr. Martin Shields: Who carries out the assessment under REACH and under CEPA?

Mr. David Morin: Under REACH, the European Chemicals Agency or member states could do it. Under CEPA, it's essentially done within the safe environments directorate at Health Canada, or the science and risk assessment directorate at Environment Canada.

The other point to add to this is that when REACH identifies a substance of very high concern, we do mandatory surveys to see if we need to look at that substance in Canada also. We look at whether we have already surveyed it or do we have to.

Mr. Martin Shields: On pages 5, 7, and 26, you described many different people who are involved, advisory and whatever else. The one I missed—and some people say I play this tune all the time—is FCM and the municipalities. Where are they? I remember in municipalities we were always digging out this piece of legislation, but I don't remember any mention in any committee of any process that involved FCM and the municipalities. It gets downloaded to them at some point. Are they in the process?

The Chair: You have 10 seconds.

Mr. David Morin: They're not on the CMP stakeholder advisory council. Years ago, we did stuff with FCM. Offhand I cannot remember on what. I do recall there was stuff that was done, but my apologies that I can't remember.

Mr. Martin Shields: Okay. Thank you.

The Chair: Unfortunately, we've run out of the time we allocated to this, and we do need the half hour after this to do some discussion. I do know that there are other questions that your excellent presentation has spurred. I think if members have extra questions, they could send them to the clerk, and then she'll send them to you. If you could respond that way, we'd really appreciate it.

Mr. Morin, go ahead.

Mr. David Morin: I just got a note here just to add to the comment there. Apparently they give us mandatory drinking water concentration data. Thank you.

The Chair: Because that's their jurisdiction.

Mr. David Morin: Yes.

The Chair: Mr. Morin and Mr. Moffet, thank you very much for this.

Obviously, it was great to have all of the staff in the room to help us with questions. This has really nicely done an overview for us. It's also, in a very nice way, identified where the opportunities may be. We may have some others, but it's been really nice to have you bring those forward for us to consider.

So, thanks again.

I'm just going to suspend for a few minutes to clear the room, and then we're going in camera for discussion.

[*Proceedings continue in camera*]