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Chair

Mrs. Deborah Schulte

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• (1535)

[English]

The Chair (Mrs. Deborah Schulte (King—Vaughan, Lib.)): Good afternoon, everyone. We're going to start our next session on CEPA, regarding the enforcement.

We have several guests with us today, and I'd like to introduce them.

We have Stephen Laskowski, senior vice-president of the Canadian Trucking Alliance.

From the Department of the Environment, we have Margaret Meroni, chief enforcement officer, enforcement branch; Heather McCready, director general, environmental enforcement directorate, enforcement branch; and Linda Tingley, senior counsel, environmental legal services.

Welcome to all, and thank you very much for being here with us today.

We'll start with Stephen Laskowski.

Mr. Laskowski, the floor is yours.

Mr. Stephen Laskowski (Senior Vice-President, Canadian Trucking Alliance): Thank you, Madam Chair.

Thank you, committee members.

I'll start by talking a little bit about who we are, so you get an understanding of our perspective.

We are an alliance of provincial trucking associations from coast to coast. We represent over 4,500 trucking companies. Our board is made up of 80 executives from across the country who are either owners or senior vice-presidents, so we represent the ownership within the trucking industry, from for-hire trucking, couriers, and private carriers—all aspects of the industry.

I'm going to tell you a story. I'm going to do what my media guys tell me never to do, which is to bury the lead, but I think you need to have an understanding of where we're coming from and our perspective when I get to the point of CEPA and enforcement.

There are two things to be mindful of as I tell this story and as I get through the recommendations. The Canadian Trucking Alliance is extremely supportive of environmental controls on our engines, which started with air-quality emissions and are moving forward with greenhouse gas emissions. Make no mistake about our support for cleaning the air and reducing our carbon footprint.

The second element of this issue to remember, when I get to it, when I give our recommendations, is that this is not a new issue I bring before this committee. The Canadian Trucking Alliance has raised the issue of enforcement in CEPA in this particular example, which I'll get to in about five or six minutes, since 2012 or 2013. It's not a new issue, but we thought this was a wonderful opportunity, and we thank you for this review to bring it forward again.

First, I'm going to talk about trucks and the environment to give you an idea of how we are regulated. We are the only freight mode in North America that is regulated both from an air-quality emission perspective and from a greenhouse gas perspective.

I'll start with the air-quality emissions. We are the only mode regulated for particulate matter and NOx. What are those two key emissions? Think smog, and on the particulate side, think respiratory-illness diseases. That rule was phased in over three periods: 2004, 2007, and 2010. By 2010, our engines—and all engines sold since 2010—are what the U.S. EPA has called “the near-zero emissions engine”. What does that mean? It means that the air you're breathing outside in Ottawa today is probably dirtier than the emissions coming out of truck tailpipes with regard to particulates and NOx.

The second phase of the regulations that come into force is on carbon footprint. Trucking is the only freight mode in Canada with engines regulated from a carbon perspective. That rule started in 2014. It goes to 2018. A second phase we're currently working with the EPA and Environment Canada on developing will start and come into effect in 2018. It will deal not only with truck engines but also with tractors and trailers.

Both of these rules are fantastic for the environment. They work, and we're supportive of them.

In terms of some of the backdrop, and no doubt you've heard this from every other sector, these rules come with a cost. One is the capital acquisition cost, which really isn't the issue I'm bringing before you; it's just an information item. Costs for those 2004, 2007, and 2010 trucks were around \$15,000 more per tractor. That's not an insignificant cost when you're looking at a tractor of around \$120,000, especially when you get to larger fleets and sizes, and when you're talking about for small businesses. But that's the cost of clean air. That's not an objection from CTA; it's just a fact for your consideration.

The more important issue is the cost of maintenance and downtime. The 2004, 2007, and 2010 air quality regulations were developed in a *Field of Dreams* type of mode: build the rig, and the technology will come.

● (1540)

The technology came, but it really wasn't ready. What does that mean? It means for trucking companies today that if you are a 100-truck operator you now need 120 trucks, 20% more in your fleet, to deal with downtime related to emissions controls. That's a reality.

The other reality of the regulation is to protect the environment and to ensure that these environmental components are dealt with by the fleet owners and their shops. Think of a "check engine" light, except a little bit more sophisticated. Every truck has one now, and when that check engine light comes on, it's called limp mode, which means there is a problem with some of the environmental control devices on that truck. Unlike your check engine light, which you look at and it gets annoying and you wonder if that thing is ever going to go away, for a trucking company and for a truck driver, that's a ticking clock. Eventually the truck shuts down if you don't address the issue. Keep in mind that we're dealing with trucks that are underperforming from a reliability standpoint as well as the limp mode issue.

I'll raise this in my recommendations moving forward, but what CTA will recommend going forward, because the limp mode is also going to be a function of the GHG regulation, is that we extend the distance of the limp mode to allow truck drivers who may be in various parts of the country to get home so their truck can get fixed. The environment will be dealt with but these truck drivers will be able to get home and be safe and also deliver their load as many of the loads are very time sensitive. We'll address the environment, driver safety, and the economy.

Again, I want to emphasize, as I now get into the heart of my recommendations and why you're here today, that the CTA is very supportive of the rules as they concern air quality and GHG, but there are issues. Some within our industry, with regard to maintenance and the limp mode, have decided to go an alternative route. What is that route? They've used what we generically term defeat devices. These are devices that circumvent the environmental controls on trucks. We are not supportive of the use of that technology.

In the United States, the Clean Air Act allows the U.S. federal government to go after manufacturers, resellers, and installers of these defeat devices. In Canada we do not have that authority under CEPA. Also, the provinces themselves have rules—some do and some don't—with regard to these defeat devices. Those are inconsistent and they have dark holes. We've also found consistently poor enforcement, I would label it, across the country with regard to these defeat devices.

The following are our recommendations:

One is that CEPA be amended to allow the Canadian government to enforce the same or similar penalties to those administered under the Clean Air Act for engine tampering.

Two is that although it's not ultimately the decision of the Government of Canada, Transport Canada and Environment Canada would assist the CTA in championing a tampering inspection that specifically looks for evidence of EGR and DPF devices. Those are the two main components under the clean air emissions controls to be added to the periodic mandatory vehicle inspection program.

What is that? Good trucking companies will inspect their vehicles five, six, seven, eight, ten times a year from a safety perspective, but according to provincial law, a truck must be inspected at least once a year.

We're saying that at these private inspection licence facilities performing what's called the PMVI, periodic motor vehicle inspections, a program under provincial control, these issues of defeat devices be monitored and that trucks be failed if they are found to have them.

Three is that Environment Canada must begin working with Transport Canada to establish testing protocols for greenhouse gas reduction qualifying technology and supporting wiring systems.

● (1545)

Although we are not making excuses for people who use defeat devices, there is a reason this is happening in the marketplace. It is creating an unlevel playing field, but there is also a motivation out there, the reason this is being done.

Four, in June 2015 the Government of Canada introduced the safer vehicles for Canadians act. The bill proposes new powers, which would allow the Minister of Transport to order a company to issue a recall and require manufacturers to fix defective or non-compliant vehicles. The minister could also order manufacturers or importers to pay for repairs and ensure that new vehicles perform reliably before they are sold to the public.

In addition, manufacturers and importers can face fines of up to \$200,000 per violation. These fines are an alternative to prosecution to help address safety issues more quickly.

The Canadian government should re-examine the introduction and expansion of the safer vehicles for Canadians act to better protect purchasers of commercial equipment.

Lastly, CTA supports a modified form of limp mode technology, which I explained earlier.

In closing, I think this is a wonderful opportunity for this committee and the Government of Canada to ensure that environmental controls are in place under CEPA, and that defeat devices aren't out there, so we protect the environment and also create a level playing field for businesses. The vast majority of trucking businesses are playing by the rules and working through these maintenance rules.

Thank you, Madam Chair.

Thank you, committee members.

The Chair: Thank you very much for that testimony. It was very enlightening.

Margaret Meroni, if you would like to get started, that would be great. Thank you very much.

Ms. Margaret Meroni (Chief Enforcement Officer, Enforcement Branch, Department of the Environment): Thank you, Madam Chair and members of the committee.

Good afternoon. It is a pleasure to be here.

My name is Margaret Meroni, and I'm the chief enforcement officer at Environment and Climate Change Canada.

I'm here today with my colleagues Heather McCready, the director general of the environmental enforcement directorate; and Linda Tingley, senior counsel from the Department of the Environment.

[*Translation*]

I am glad the committee has expressed interest in enforcement matters as part of its review of the Canadian Environmental Protection Act 1999, or CEPA.

We are pleased to speak to you this afternoon to explain our mandate and operations as well as our activities as they relate to the enforcement of CEPA.

[*English*]

Strong and effective enforcement of Canada's environmental and wildlife protection laws is integral to our commitment to clean air, clean water, and the conservation of wildlife species and their habitat.

I will start with a brief overview of our branch operations to provide some context, and will then explain the role and functions of environmental enforcement officers.

The enforcement branch was consolidated as an independent branch at Environment and Climate Change Canada 10 years ago with a chief enforcement officer as the head of the branch, reporting to the deputy minister of Environment Canada and bringing together wildlife and environmental protection in a merged organization.

When the branch was created, we were able to gather employees dispersed across the department and integrate them into the new branch. In 2005, the newly formed enforcement branch had about 240 employees.

Once established, the branch was further stabilized when budget 2007 and budget 2008 provided us with funding to increase the number of officers. Today we have about 375 employees, approximately 280 of whom are uniformed officers. Of those officers, 85 are designated to enforce federal wildlife legislation, and the remainder enforce CEPA and the pollution prevention provisions of the Fisheries Act.

The branch has two operational directorates: the wildlife enforcement program and the environmental enforcement program. The wildlife program administers four wildlife acts, including enforcement of 147 protected areas, which is worth mentioning, given that the committee is also studying protected areas. The environmental enforcement program administers CEPA and the pollution prevention provisions of the Fisheries Act, the former being the focus for today.

[*Translation*]

With the establishment and growth of the branch, we developed a comprehensive training program for our enforcement officers as well as a suite of policies and protocols to guide their decision-making.

[*English*]

We have continued to adapt our operations as new regulations come into force and as our mandate and the suite of enforcement

tools continue to evolve. Enforcement officers administer various acts and associated regulations, either in whole or in part, that deal with risks to the environment and its biodiversity.

A significant impact to our operations occurred with the coming into force of the Environmental Enforcement Act, EEA, in 2010. The EEA set out to strengthen and harmonize enforcement regimes across the many acts under our responsibility. It further enhanced the fine regime with the introduction of mandatory minimum fines and increased maximum fines for serious environmental offences.

The EEA enables tougher enforcement to hold offenders accountable for their actions, and it requires the court to increase the fine imposed on an offender to account for damage to the environment or to a valuable or unique component of the environment. The amendments brought about by the EEA also introduced the concepts of loss-of-use and non-use value for the purposes of assessment of damages by the court, which allows the Public Prosecution Service of Canada, the PPSC, to introduce evidence of environmental damage and economic benefit as aggravating factors when they take cases to court. The EEA also introduced a common set of sentencing principles, helping to ensure consistency in how environmental law is applied across the country.

The EEA is being implemented in phases. With the coming into force of the Environmental Violations Administrative Monetary Penalties Act, EVAMPA, we have gained another tool in being able to use administrative monetary penalties or AMPs. We now await implementation of the AMPs regime to begin using this tool. It is anticipated that the environmental violations administrative monetary penalties regulations will come into force sometime in 2017.

● (1550)

[*Translation*]

When the administrative penalties do come into force, we will have an additional tool to address non-compliance under CEPA.

We will then be able to assess an administrative penalty instead of pursuing prosecution, depending on the circumstances of each offence.

[*English*]

As for linking the legislative authorities and how an enforcement officer functions in the field, I'd like to explain the principal activities and decision-making of an officer.

Our enforcement officers are empowered to take specific actions under the laws they enforce, and CEPA provides our officers with all the powers of a peace officer. Under CEPA, they are authorized to carry out inspections to verify compliance with the law; they can direct that corrective measures be taken when there is danger to the environment, human life, or health caused when the illegal release of a regulated substance has occurred or is about to occur; and they can conduct investigations of suspected violations. Our officers also have the power to arrest, to seize, and to apply to a judge to issue them a search warrant.

In addition to these powers, enforcement officers have a choice of enforcement actions available, depending on the nature and severity of the non-compliance. These actions include issuing warnings, issuing directions in the event of a release, issuing tickets, issuing detention orders for ships, and issuing environmental protection compliance orders, or what we call EPCOs.

Finally, our officers have discretion to lay charges, and the decision is generally made with the approval of the Public Prosecution Service of Canada, the PPSC. Once charges are laid, the PPSC assumes full control over the proceedings. An investigation can be terminated with charges stayed or withdrawn at this stage. Officers commonly consult the PPSC before taking the step of laying charges in a specific case. As a matter of fact, in certain provinces—New Brunswick, Quebec and British Columbia—it is mandatory for officers to obtain pre-charge approval.

It is important to note that while officers may make recommendations, the decisions respecting the prosecution of charges and the size and nature of the penalty sought through the court proceedings are at the sole discretion of the Public Prosecution Service of Canada.

As for the other enforcement actions I mentioned, our enforcement officers, as is generally the case with those possessing peace officer powers, are independent in choosing among these options to address non-compliance. They may consult for advice, but they are the ones who ultimately make the decision.

Officers are, however, guided by our compliance and enforcement policies, which are public, to assist them with the general principles that govern the application of our laws. These policies provide our officers guidance in the exercise of their discretion. Through adherence to these policies, our officers apply the act in a manner that is fair, predictable, and consistent, meaning we strive for fairness and equity in how we apply the law across Canada.

Our focus is on suppression—that is, deterrence achieved through the risk of unscheduled inspections—prevention of damage to the environment, and compliance with the act within the shortest time possible. This is worth noting as our focus is not only on ensuring that the law is complied with but also on ensuring that the environment is protected and that damage to it is minimized while an incident is occurring.

Our goal is to secure compliance in the most efficient and sustainable way possible, ideally before significant damage is done. We may need the full force of the law to accomplish this objective, or we may be able to get there in other ways. It is often the case that a simple warning will be sufficient to bring non-compliant entities into compliance.

In 2015-16, we conducted approximately 4,000 CEPA inspections, which covered over 3,000 infractions. In roughly half of these incidents, a written warning was sufficient to bring the regulatee into compliance. While this isn't headline-grabbing news, it is an effective use of our resources and has allowed us to bring a significant number of offenders into compliance before serious damage could be done, in a manner consistent with the principles outlined in CEPA and our compliance-and-enforcement policy.

● (1555)

[*Translation*]

As you may appreciate, there is almost an equal divide between how much of our work is done proactively, and how much is responsive.

Responsive inspections are driven by received complaints from the public, referrals from provincial partners and other entities, and incidents such as pipeline breaks, train derailments or at times self-reported by industry.

[*English*]

The same officers who enforce CEPA are also designated to enforce the pollution prevention provisions of the Fisheries Act. Indeed, about half of the almost 7,000 inspections we conducted under CEPA and the Fisheries Act last year, the 2015-16 fiscal year, were responsive in nature.

We ensure that we manage our resources to enable us to respond appropriately. Proactive work is essentially planned inspection activity predicated on risk-based planning and informed through intelligence that establishes national and regional priorities and projects. We take into account a series of factors, such as the risk to the environment and human health represented by the regulated substance or activity, compliance issues in a specific community, new and amended regulations, government and departmental priorities, and domestic and international commitments and obligations.

We focus our efforts strategically, given that there are tens of thousands of regulated entities across Canada. This means that in any given year we can only address a certain representation of the regulated community. We target our actions on areas with the highest likelihood of non-compliance and where non-compliance leads to the greatest risk of environmental harm and threat to human health.

In terms of results, last year, which was fiscal year 2015-2016, in addition to the 4,000 inspections we conducted, we opened 54 investigations under CEPA and obtained 24 convictions. Eighteen of those convictions came from our planned work. This marks a year-on-year increase in the number of convictions obtained since 2011-2012, when only ten were registered. There has also been a roughly ten-fold increase in the size of the overall fines handed down by the courts during this same period, from about \$100,000 in total in 2011-2012, to over \$1.1 million in 2015-2016.

However, I want to stress that enforcement results cannot and should not be measured solely by numbers. Court cases, regardless of the amount of the penalty obtained, certainly do provide a general deterrence for regulatees; however, our presence in a specific regulated community also yields results. That is hard to quantify but is definitely effective.

With that, I will conclude my statement. We would welcome any questions you may have.

Thank you all.

The Chair: Thank you very much.

I am sure we will have lots of questions.

First, I just want to welcome to our committee Angelo Iacono, who is standing in for John Aldag.

Thank you very much. That's great.

We will begin questions with Mr. Fisher.

Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.): Thank you very much, Madam Chair.

I thank you folks for being here.

First off, I just want to comment on something Stephen said.

I really appreciate the very specific recommendations that you're coming forward with for your industry. I salute you on that. I don't have any questions based on what you said. Your testimony was very clear and very direct on what you hoped for. It surprised me a little bit. I want to thank you for those very specific recommendations.

• (1600)

Mr. Mark Gerretsen (Kingston and the Islands, Lib.): Not you personally.

Some hon. members: Oh, oh!

Mr. Darren Fisher: Not you personally.

I'll go to Margaret.

Thank you as well for your testimony. Correct me if I'm wrong. This is just the sense that I got from your testimony, which covered an awful lot. It feels to me, as it felt to me when I was a regional councillor for years, that our enforcement is reactionary and not proactive.

I'll give you a chance to give me a really quick answer. Do you feel that I'm off base on that? There was an awful lot in your testimony, not that there's an easy yes or no answer. Do you feel that's an assumption I'm making? It seems as though it may be complaint-driven.

Ms. Margaret Meroni: Thank you for the question.

You're right. There is a split between the reactive or responsive and the proactive enforcement work we do. Generally when we look at the numbers, we see that where we take action there is about a 40-40 split in terms of percentages, with 20% of our work being ongoing maintenance work. A lot of it is based on the incidents that occur, responses to different referrals we may get, and self-reporting of incidents of all sorts of magnitudes. This is why we are allowed to organize ourselves around only 40% of the proactive inspection work.

We organize that around looking at a risk-based approach informed by intelligence, and by gathering information from various parts of our organization, including our officers in the field, to try to determine where there is the highest risk to the environment and where we know there are higher degrees of non-compliance. It is a bit of a balancing act.

Unfortunately, when it comes to responsive enforcement, we can't plan for it, but we do try to allocate our resources and our efforts to be able to respond. Usually, they are quite major incidents, such as train derailments, pipeline ruptures, and so forth.

Mr. Darren Fisher: How about in remote areas and indigenous communities in the North?

We've heard various testimony to the effect that they are affected more by toxic substances than are other communities in more populated areas, so let's look at your enforcement measures and prosecutions from April 2014 to March 2015.

Are you able to tell us how many of the issues were related to northern communities or indigenous communities?

If you're not able to answer that now, perhaps you could provide that to the committee in a written response, because I'm concerned, based on my assumptions, that there would be a very small amount in the northern areas as compared to the areas where there are more eyes on the street.

Would you provide that in a written response, or do you want to comment on that now?

Ms. Margaret Meroni: I'll defer to Heather to respond, and then we'll see if an additional information request will be needed.

Ms. Heather McCready (Director General, Environmental Enforcement Directorate, Enforcement Branch, Department of the Environment): We can certainly follow up with more information.

First of all, thank you for having us here. It's a genuine pleasure for me to be here to talk about our work. I really appreciate the opportunity.

In terms of northern communities, one of the projects we're working on proactively is the kind of thing that doesn't hit the news. You hear about the reactive stuff because it is splashy. It hits the news. There's a major incident to which we're responding.

You don't hear about the proactive work, because there are things we're working on over a long period of time, often with other partners. They may or may not end in prosecutions. The goal isn't necessarily to chase after a prosecution; the goal is to find a big environmental problem and solve it. I'm really happy that you mentioned northern communities and indigenous communities.

One of the issues faced by those communities is storage tanks. Especially in the North, there are a lot of people who are using storage tanks for fuel. Some of these tanks are old and unregistered. No one even knows they're there. The owners of the properties may not know they have a storage tank. Some of these tanks are leaking.

Some of them have inadequate secondary containment or product transfer areas. That's important in the North, because if you're filling up a fuel tank and it's really, really cold, you're probably going to go inside. You're not watching the fuel as it's being deposited into the storage tanks. If anything goes wrong, you're not there to stop it and clean it up.

We have a project that has actually been going on for a few years now, focusing specifically on storage tanks, looking for unregistered storage tanks, and the ones that are registered, making sure they've been inspected, making sure that there's follow-up, and dealing with the tanks that have issues.

Sometimes you're going to see prosecutions on that, and recently, there have been a few in Saskatchewan, for example, involving first nations groups. In those cases, it's not that we're targeting those populations for severe enforcement, it's that we recognize that a leaking storage tank in that community can cause real environmental and human health problems, and can lead to increased amounts of contaminated sites in those areas.

By increasing enforcement there, we're really trying to stop environmental harm. Sometimes you'll see prosecutions. More likely, what you're going to see is an EPCO, an environmental protection compliance order. Again, that's not the kind of thing that makes the news, but we issue quite a lot of EPCOs on storage tanks, and we're trying to compel the regulatee to come into compliance and deal with those environmental issues before they cause harm.

I hope that is helpful, and we can also provide some more data.

•(1605)

Mr. Darren Fisher: It was, yes. We went a little further on that, but I was interested in the information.

I want to jump a little bit ahead here.

The Chair: You have 30 seconds.

Mr. Darren Fisher: Okay. I had a question last week about microbeads. Microbeads have supposedly been banned from shelves.

Can you provide some feedback on them?

Ms. Heather McCready: Not yet. The regulation hasn't gone to *Canada Gazette II*. Once the rule's in place, we can enforce it. Watch this space. Invite us back in a couple of years, and we'll be able to talk to you about that.

Mr. Darren Fisher: When it passed through the House a year and a half ago—

Ms. Heather McCready: It's not there yet.

Mr. Darren Fisher: I'll do some research. Thank you.

The Chair: Mr. Eglinski.

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

I'd like to thank our witnesses today, and I'll start off with Stephen Laskowski, a good Ukrainian name.

I really like the recommendations with which you came forward. A few years back, I wrote a safety program for a major trucking company in northern B.C., and what you said was so true regarding the cancellation of the defeat devices. That had a big impact on the industry in those first few years we brought those trucks in.

They would break down outside of town, go into limp mode, and then you'd be so far out, you couldn't get back, because the limp mode would run out. Then there's the cost of towing. Even the manufacturers couldn't figure out what was wrong with the trucks. Oftentimes you had to hook their computers into the dealership

computers, and it would take months for the truck to get repaired. I like what you put in there.

In 2012, the Conservative government put a program in place. I wonder if you remember it. It was called the ecoTECHNOLOGY program. We invested \$38 million over a four- to five-year period, I believe, to help offset the costs of the new technology and equipment.

Is this program still in place, and did it work well for you folks?

Mr. Stephen Laskowski: The ecoTECHNOLOGY program for our members dealt primarily with the testing end of equipment. It has morphed into another program, but the short answer is yes, it definitely helped.

It is currently in existence in an altered form, and it's still helping the industry, which gets to the latter part of our recommendation with regard to testing trucking equipment to ensure that what's brought up from the United States can actually work under our climate conditions. That is part of the problem with the defeat devices. It's all linked together.

Mr. Jim Eglinski: In speaking of the defeat devices, you mentioned something about a stronger enforcement program on them. We know that across Canada, that jurisdiction is pretty well left to the provinces, in their motor carrier departments and stuff like that, or to the RCMP or city police in those areas.

Do you know if the technology exists where a weigh scale... Could a plug and play in a truck detect if it has been tampered with?

Mr. Stephen Laskowski: These devices are extremely difficult to pinpoint. OEMs have their own challenges with identifying them. That is why we believe the best solution is a duplication of the Clean Air Act in Canada under CEPA, which would allow Environment Canada the enforcement powers to go after the manufacturers, distributors, resellers, and installers.

These people are brazen. They take out full-page ads now. It is easy to find them, much easier than to identify in a truck what's going on. As I said, it's not that we are against that idea. It was part of our recommendations to be part of PMVI, but it is extremely difficult. It's far more effective to go the other route.

Mr. Jim Eglinski: Your answer went where I thought it was going to go.

Do you see the need for a national law for the provinces to follow?

Mr. Stephen Laskowski: Absolutely. We, as a nation, take great pride in reducing our emissions. Therefore, we need a national enforcement policy, not just for emissions, but to level the playing field. This is not just an environmental issue; it's a competitive balance issue.

Mr. Jim Eglinski: I'm going to slide a little bit away from where we are, but I think it overlaps: ELDs. I know that you have been a proponent for bringing ELDs in, and for those who don't know what I'm talking about, they are electronic logging devices for trucks. I believe Ontario is looking at them.

Now all provinces in Canada use a paper trail. A paper trail is very easy to falsify, and many times we have these vehicles running longer than they should. I see where that overlaps into the environment.

I'd like to know if you feel that we should become like the United States and allow ELDs in Canada, and that they should be a national requirement?

Mr. Stephen Laskowski: Absolutely. Instead of "environment", insert "safety and competitive balance". They are the same issues.

Just for the record, the CTA takes great pride in being a progressive association. We believe in the environment. We believe in safety. We believe in compliance, and equal compliance across the country.

• (1610)

Mr. Jim Eglinski: Thank you. That's very good to hear.

I'd like to go to our other witnesses.

I was reading your report—my background was law enforcement for 35 years—and the statistics kind of caught my eye. I notice that in 2015-16, 4,000 CEPA inspections uncovered 3,000 infractions. I think you said that roughly half of these incidents were dealt with by way of warning, which is not bad. I believe there is a great role for us to give warnings versus prosecution.

Where I get a little confused is that then you say,

Last year, that is fiscal year 2015-16, in addition to the 4000 inspections we conducted, we opened 54 investigations under CEPA, and obtained 24 convictions; 18 of those convictions came from our planned work.

They must have been targeted.

What happened to the other 1,400 and some? Where did they go?

The Chair: Can you do that in 30 seconds?

Ms. Heather McCready: No.

The Chair: We're out of time.

Mr. Jim Eglinski: If you can't answer, I'd like to see a written report on that.

Hon. Ed Fast (Abbotsford, CPC): We have a really good chair.

Ms. Heather McCready: We can break that down for you further.

One thing to point out is that we're likely to uncover multiple infractions per inspection, so you're looking at one company that could have multiple infractions. Then, each enforcement action that's delivered could be dealing with multiple infractions. It's not like they're necessarily disappearing.

We can provide you with more information breaking down exactly what happened to each one of those cases if you'd like.

Mr. Jim Eglinski: Thank you.

Do I have more time?

The Chair: No, you're done.

Mr. Jim Eglinski: Oh darn. I had a lot of questions, but I don't have a lot of time.

The Chair: You might get another chance. We'll see how it goes.

Ms. Duncan.

Ms. Linda Duncan (Edmonton Strathcona, NDP): Thank you.

My questions for this round, and I hope we get a second round, are going to be for the enforcement officers.

I hope to get back to you, Mr. Laskowski, but I want to commend you for coming forward as a sector calling for strict law enforcement for environmental protection. I want to share with you in the second round what we did in Bangladesh when I was working on a project there to address exactly what you're talking about.

Thank you very much for coming. This was my request and it's my prejudice, because I used to be the chief of enforcement, and I don't think we hear enough from the enforcement officers. It's a very important part of the agency. I'm wondering if you can provide to the committee the breakdown of staff at headquarters and in the regions. If you have a report on that, you could submit it so that everybody could see that.

Ms. Heather McCready: We can provide you with better data for that. You're looking at five regions, and each has a regional director. Most regions have approximately three managers and several enforcement officers under them. At headquarters we're looking at maybe—

Ms. Linda Duncan: You don't have to answer it now.

Ms. Heather McCready: There are definitely more people in the regions than there are at headquarters.

Ms. Linda Duncan: Maybe you could just give us the breakdown of who does what at the headquarters and in at least one region. I think B.C. would be a good one to look at.

Ms. Heather McCready: Sure. Often people want to see more boots on the ground, as they say.

Ms. Linda Duncan: Please don't expand on that, because I have some very clear questions that are directly related to that.

I was going through my files on enforcement, and I recalled something I'd forgotten about when I'd asked you to come forward, and that is the disclosure of the report by the former enforcement CEO about serious problems with morale within Environment Canada and the enforcement agency. The issues that were listed included enforcement officers who felt enforcement actions were blocked, if they were not a government priority or if there was more importance to friendly provincial relations; a disconnect between the regions and headquarters; a lack of operational experience at headquarters; a lack of recognition of the importance of officers with science knowledge; a lack of respect for the job of investigations; and on it goes.

Can you tell us what has been done to address these very serious allegations and whether things have changed now under the new government? This is a report from this past January.

• (1615)

Ms. Margaret Meroni: Thank you.

That was a report that was related to the public service employee survey that was conducted in 2014, and the report that you're referencing specifically was an action plan that identified some of the additional commentary through the PSES, the Public Service Employee Survey, which was from across the country. To that extent, certainly I think that across the department and across the public service, we've had varied responses about morale and happiness, or the lack thereof.

What we had identified was that action plan. It was misquoted a bit in the media, but notwithstanding that—

Ms. Linda Duncan: I was looking at the exact report. I'm not talking about what the media said.

Ms. Margaret Meroni: Okay, because it did end up in the media. Sorry, I thought that was the reference that you were making.

To that end, we established the action plan, and that was undertaken and issued by my predecessor, the prior CEO. Upon my appointment earlier this year, I committed to taking those considerations forward, and I continue to try to drive for improvements across our organization.

We've channelled our focus to areas of leadership, communication, and respect in the workplace, and we've been undertaking a whole series of discrete activities to try to improve morale. We hope that by the time the next survey comes forward, we will see some improvements in morale and so forth. There has been a lot of outreach with the officers to get their input.

We've expanded our management cadre to also include more of the regional directors to ensure that we get a broader perspective, so things don't get perceived as being, or at least are not directed, from a headquarters-only perspective, in the hope that we can look at some of our operational imperatives and at where we want to make improvements around training, around communications in the field, and so forth. We are taking a lot of concrete actions to try to address a lot of those concerns. We continue to collect feedback to see what we can do to improve things going forward.

Ms. Linda Duncan: None of this addresses what I see as the ongoing concerns. When I became the chief, these were exactly the kinds of concerns that were expressed. It's troubling to me. When I left that office, I recommended it become a separate enforcement division, and I'm glad to see that happened.

The reason for that was that there were a lot of problems with interference by headquarters and because of relationships between regional directors, and their priority was to maintain relations with the provinces and the territories. When I read about these concerns and the fact that they are continuing, my next question to you would be who makes the decision on whether there will be an enforcement action initiated? Is it the officers on the ground, or is it a political decision at headquarters?

Ms. Margaret Meroni: The officers are completely autonomous in terms of the actions they take. That was what I had referenced in my speaking points.

The establishment of an independent branch in part creates that separation as well, so that we do not discuss any of the actions the officer wants to undertake unless we're reporting in terms of providing updates on outcomes. But the officers are unfettered in their discretion, their decision-making. They work with the Public Prosecution Service to try to determine whether or not a case will be taken forward to the courts, and we've made sure we've provided them with policies to help guide and inform them in terms of some of the decision-making they're allowed to do.

They're aware of the tools through extensive training. We conduct training on both sides of the operation—environmental, enforcement, standardized training—followed up by applied enforcement training that covers the peace officer powers. Between the training and the policies, they are unfettered in their decision-making.

Ms. Linda Duncan: Do I have more time?

The Chair: It's up. I'm sorry.

Ms. Linda Duncan: I'll get it on the next round then.

The Chair: Okay.

Mr. Amos.

Mr. William Amos (Pontiac, Lib.): Thank you, Madam Chair.

Thank you to the witnesses. We do appreciate you guys coming here.

Specifically to the witnesses from Environment Canada, it's a pleasure to have this opportunity. I think it's really important for the Canadian public to better understand what it is you do. I think your initial statement really does lay it out quite simply, because it's not really all about being out there with a stick. There's a whole lot more to it, and oftentimes federal enforcement, whatever administration it happens to be under, comes under fire, including my own in the past.

For this first section, I want to focus on an article, criticisms that I voiced publicly through the *McGill International Journal of Sustainable Development Law and Policy*. I figured you guys would have prepared, knowing that I had written this kind of thing years back. I want to go specifically to the report from the Commissioner of the Environment and Sustainable Development from 2009, where the commissioner was, I would say, fairly withering in his criticism with respect to reporting obligations required under CEPA. The Commissioner also indicated that the quality of publicly available enforcement data was inadequate, in terms of accuracy, completeness and accessibility.

I want to linger on that last point and get your thoughts on where Environment Canada is and where the federal government is on enforcement data, accessibility, and completeness, and whether there is a vision for where we can go next. If we're a committee that thinks we can go to the next level, can we get a sense of where you guys would like us to go?

• (1620)

Ms. Heather McCready: Thank you very much for that, and thank you for plugging the *McGill JSDLP*; I'm a former editor-in-chief, so I appreciate it.

Yes, I'm familiar with your article.

I'm not going to offer any opinions on where I think things should go, but I can tell you where we are and what we're working on.

The CESD audit was issued quite some time ago, and there have been many changes since then. I've been with the branch for about seven years and have seen things change and modernize quite significantly over that time. There are three areas in particular in which I think we're seeing some pretty dramatic improvements, and you're going to start seeing these play out publicly over time.

The first is with planning and reporting. That's about deciding what we should focus on and then how we communicate about the work we've done. In deciding how we should focus our efforts, and also to address Ms. Duncan's comments about regional staff versus headquarters staff, I actually don't see a divide at all between regional staff and headquarters staff.

I'm a relatively new director general. I've been on the job since July, and everything I do is about the work the regions do, because theirs is the work of the enforcement branch; everything else that happens, at headquarters, is supportive of their work. The widgets that we make are enforcement actions, not reports on things or PowerPoint presentations.

We've brought the regions very much in to help figure out what we should be doing on an annual basis, in that we have a representative from each region who sits on a committee that helps decide what our priorities are. They work with the staff at headquarters to crunch the data and look at what we've done in the past and where our interventions have been the most successful; then we figure out where to focus our priorities for that year.

It's very much grounded in what's really happening out there in the world. I think this shows a lot of respect for the work people do on the ground, but much more importantly, I think it actually makes our work a lot better.

Describing the work that we do in reporting is always a challenge in an enforcement organization; that is the case across the world, actually. Numbers don't really adequately tell the story of the work we do.

For example, you might see something that says we opened up an investigation. What does that mean? An investigation can take a few months, but 50% of our investigations actually take one to three years of lots and lots of hard work. It counts as one investigation, but it really doesn't tell you the story of what we've done.

We are getting better at reporting using narratives, appearing at industry association events and bar association events and events such as this to tell our story better and in a way that the public can understand. That's in line with what the present government is doing in terms of reporting out to Canadian people in a way that's easier to understand.

The second area we're getting a lot better in is the use of intelligence analysis. It helps us out strategically in considering where to plan our efforts for the year. Margaret mentioned that our planned inspections are based heavily on what our intelligence group is providing. We've made significant efforts to improve their capacity over the years, and that's only going to grow with time.

The third area in which we're improving dramatically is our investigative capacity and our hand-off to the Public Prosecution Service, in terms of working with them and improving our relationship with them. It's a very close relationship right now, and that closeness is also helping us make sure that things that need to go to court do go to court and that fines start to rise. I think you're going to see the efforts of this over time, and were we to be audited again in a couple of years, you'd see a different result.

Mr. William Amos: Thank you.

I'm curious about the department's perspective on the National Enforcement Management Information System and Intelligence System—NEMISIS—which the public generally isn't aware of, but which is likely of interest to them.

Is it your view that the public has a role to play in enforcement and that its own ability to access information and data about enforcement activities undertaken can actually serve to maintain the disincentive effect that your own department's efforts already achieve to a degree?

● (1625)

The Chair: You have about 20 seconds.

Ms. Heather McCready: Again I'm not going to give you my opinion on that, suffice it to say. I'm happy you mentioned NEMISIS, because that was one of the issues raised in the audit. We are actually about to roll out a brand new database system that will be much more modern and far easier for me to pull information from. We're quite excited about that.

Police officers don't open up their databases to the public for the same reason we don't. There are all kinds of privacy concerns around that sort of information, and these are ongoing files. We can't talk about open files publicly; that sort of information is protected and shouldn't be shared.

However—

Pardon me?

Ms. Margaret Meroni: We extrapolate statistics.

Ms. Heather McCready: We do extrapolate statistics for the public, and I think an educated, aware public, able to use the tools it has under CEPA, is of course a good thing. Those tools are there for a reason.

The Chair: Thank you very much.

Next up is Mr. Shields.

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

Thank you to the witnesses for being here today. I appreciate it.

Stephen, I'll go to trucking questions to start with. You talked about who you are representing here. Can you just explain that one more time for me?

Mr. Stephen Laskowski: Sure.

Our membership is made up of ownership CEOs. Our board is made up of those same individuals. In total it represents about 4,500 companies from across the country.

Mr. Martin Shields: You used the words private carriers.

Mr. Stephen Laskowski: Yes. Those are people who haul their own goods, such as a retail outlet or manufacturer that makes a product, and then owns and operates the vehicles as well.

Mr. Martin Shields: Where are the independents?

Mr. Stephen Laskowski: Do you mean the owner/operators?

Mr. Martin Shields: Yes.

Mr. Stephen Laskowski: Most owner/operators these days work for our membership. The true sense of the independent carrier of nostalgic movies, people out there getting their own freight and operating their own vehicle, really doesn't exist anymore. They are independent owner/operators who may work for multiple carriers, but they are contractors to those carriers.

Mr. Martin Shields: Are you representing the contractor piece, then?

Mr. Stephen Laskowski: Indirectly, we are. We believe we are the voice of the industry, but not everyone pays their dues.

Mr. Martin Shields: Now you're getting to where I want to go.

I'm an old guy, so I remember when the first airtight equipment for environment on our cars was a modified juice can. We all learned quickly how to get those out of there. You're talking about a much more expensive process. If everybody's in this, who is the group taking those pieces out and going around it? Who's doing this?

Mr. Stephen Laskowski: Well, I don't think you can characterize it with a description. When I told the story, it was about a level of frustration within the industry, and they've reached a point, whether it's their drivers, whether it's their customers, or whether it's a combination of both.... I don't think you can characterize it by saying certain types of individuals would motivate themselves towards the defeat devices. I do want to say that I don't make excuses for this. They're breaking the law. It's the background for why this is happening.

Mr. Martin Shields: But you're very adamant about it. The way you express yourself, you're talking about a group out here that is defeating the system.

Mr. Stephen Laskowski: That's correct.

Mr. Martin Shields: Are they the ones who, because the margins are so tight, are trying to get around the margins? They're working for companies; they're not independents. You're talking about companies that are finding a way to defeat this.

Mr. Stephen Laskowski: I'm glad you brought up margins. On average, for example, a class 1 railway's operating ratio would be 0.67 or 0.68. A good ratio for a trucking company is 0.97. That's 3¢.

Mr. Martin Shields: Yes.

Mr. Stephen Laskowski: That's for everybody. To your point on the margins, that's what motivates. You're getting to the point where it's what can they do to stay in business? Again, that doesn't justify it, because the vast majority are dealing with it, and we're dealing with the competitive issues plus the environmental issue. Those aren't excuses, but I'm saying to the committee that we can deal with this in its entirety.

You change CEPA, and let's make sure we're dealing with this. Let's make sure we have a strong warranty recall system. Let's also make sure that trucks coming up into Canada can actually work in our cold weather.

Mr. Martin Shields: Historically, when rules get tighter and the margins are tighter, the underground economy grows. You're going to drive it underground if that margin's too tight. They're going to find a way underground unless you work with them.

•(1630)

Mr. Stephen Laskowski: I think that laws are in place to ensure that 99% in society are compliant. I think we can never worry about that 1% who go underground, but I think—

Mr. Martin Shields: I would accept that—

Mr. Stephen Laskowski: —we definitely need to have a law in place.

Mr. Martin Shields: I accept that, but you had a lot of focus on that—

Mr. Stephen Laskowski: Yes.

Mr. Martin Shields: —so I was thinking this was a big concern for you, and you're worried about that 1% a whole lot. Now you're talking about what the 99% are doing right rather than focusing on the 1%.

Mr. Stephen Laskowski: Well, I think that as a society, an association, and a democracy, we pride ourselves in upholding the law.

Mr. Martin Shields: Yes.

Mr. Stephen Laskowski: When we have a black hole like this, it's time for government to step in to ensure that laws are enforced for everyone.

Mr. Martin Shields: I would agree It's just that the tone of your conversation was focused on the 1%, and I'm going—

Mr. Stephen Laskowski: I can you give you an example of the irritant for the other 99%.

Mr. Martin Shields: I know it's an irritant.

Mr. Stephen Laskowski: It's rubbed in their face. There are full-page ads out on the Internet and in magazines for these devices.

Mr. Martin Shields: Okay.

Mr. Stephen Laskowski: If you're a business owner and you're struggling along with 20% extra vehicles, and your drivers are having issues, and your customers are...and you're looking there and you're doing the right thing, and it's there right in front of you, you have a right, as a business owner, to go to government. You have an obligation to stop this. What I'm saying to the committee is that you have an obligation to stop this.

Mr. Martin Shields: Now I'm getting to what you really wanted to say. I appreciate that, because what you're looking at is the 1% that's not safe.

Mr. Stephen Laskowski: It's not safe. It's not following the rules, and it's looking for ways, despite the frustration, to get around the system. It's not right.

Mr. Martin Shields: What you're looking for is legislation that does it in a way that doesn't handicap the 99% more, because when you talk about the 20% investment, and the huge.... Those costs are going to come down and be passed on to the consumer at the bottom end.

Mr. Stephen Laskowski: That's correct.

Mr. Martin Shields: You don't want to handicap the 99%, but you want to find a way with this to increase that pressure on the 1%.

Mr. Stephen Laskowski: If I had to simplify it even more, I'd empower these wonderful people with laws to enforce, because right now they have no laws to enforce.

The Chair: Thank you very much.

Mr. Martin Shields: Thank you.

The Chair: Excellent.

Okay, we're back to Mr. Amos.

Mr. William Amos: Thank you.

I find Mr. Laskowski's testimony fascinating. I'm really enjoying it.

Please don't take my lack of questions as being a mark of disinterest.

I would simply like to ask for Environment Canada's one-minute response to what they're hearing today, when it's being asserted that there is rampant disrespect of Canada's laws by truckers.

Ms. Margaret Meroni: I think he's making reference to a law that currently isn't on the books and, as we had discussed even before we came into the room, certainly after engaging with the groups that create the regulations and after hearing these concerns, we'll be ready to enforce that which is ready to be enforced. In other words, the rule has to be in place, and what is specifically being referred to today actually is not yet.

Mr. William Amos: Thank you for correcting me on that.

I want to shift back to information regarding environmental enforcement. Unless the circumstances have changed since the time this article I co-wrote was published, unless something has been changed, there are three sources of information regarding enforcement: annual reports that are required by some environmental wildlife legislation; environmental notifications that are posted on the departmental website; and news releases and statements that

provide further information regarding charges and convictions reported through environment notifications.

Are there any further sources? Has anything changed substantially?

Ms. Heather McCready: There's the Environmental Offenders Registry, which is something that came out of the Environmental Enforcement Act. People who have been convicted of environmental crimes now go on an offenders registry. There is also the ATIP process. We process many, many access to information requests on an annual basis. You mentioned annual reports. What you're currently seeing is primarily statistical. There are ways to make that better in terms of storytelling and really describing our work better.

• (1635)

Mr. William Amos: I'm less focused on the storytelling aspect. I'm actually much more interested in the hard data being available to Canadians.

Ms. Heather McCready: Okay.

Mr. William Amos: Storytelling is a way for government to say we're doing a good job; trust us. I'm less interested in that.

Ms. Heather McCready: Okay.

Mr. William Amos: What makes me most interested—and it doesn't matter if I run over time, because I have the next section—is the contrast between the information available in Canada and the information available in the United States. The question is, why aren't we like the U.S.?

Let me quickly describe the distinction between Canada and the U.S. We have those three sources of information plus an offenders' notification. There's an ATIP process. I think we all know what the commissioner has said about the weaknesses of our existing ATIP process and the commitments our government has made to reform that. In the U.S., the Environmental Protection Agency provides an easy-to-use website with quite comprehensive environmental enforcement information, almost always surpassing the minimum required by statute. It's called the Environmental Compliance History Online, ECHO, and it groups all enforcement information across statutes, the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, etc. and it's searchable by ZIP code, etc.

I'm curious as to why there is not such a system available to Canadians.

Ms. Heather McCready: I think the questions you are asking are actually about more than just enforcement data. I would refer you to the government's open data initiative across government, which is a massive undertaking the fruits of which I think you'll see in time. That's where I think you are going to be seeing more of that information come out.

Mr. William Amos: It is a broader question, but it's also a specific one, and it relates directly to the enforcement branch's efforts to achieve compliance through incentives and disincentives. It's also within the enforcement branch's power to seek funding, through annual budget processes, to provide greater amounts of information to Canadians.

I think the question still stands. I think that's a bit of a deke. Why would we not aspire to a similar standard of online data availability for Canadians so that they know what is going on with respect to enforcement? That includes inspections, investigations, environmental compliance orders, prosecutions, convictions, etc.

Ms. Margaret Meroni: At this time, we are focusing on where we are. We are obviously statutorily obliged to report—through the annual reports for CEPA, the Fisheries Act, and the Species at Risk Act—so we provide the information. We also provide information through the reports on plans and priorities, all the parliamentary reports that are tabled, and the departmental performance reports.

We focus our efforts on trying to create publicly accessible information and insight into the work we are doing, through the very venues that you already mentioned and that Heather elaborated on as well: the offenders registry, news releases, and so forth. Those are sort of the framework within which we are currently operating. If, in the future, there is an opportunity to broaden that, that's something we would consider.

Right now, we just really focus on where we plan our activities with respect to executing our duties, and then reporting on them through the mechanisms currently available.

The Chair: Will, I have to cut you off, but I'll come back to you.

Mr. Fast, go ahead.

Hon. Ed Fast: Thank you.

I'll just continue with Mr. Amos's line of questioning. He suggested that we should be adopting the regime on information and data availability that the U.S. has in place. Mr. Laskowski suggested that we adopt the same authorities as the U.S. has in place for things like engine tampering. He also made a recommendation regarding inspections—that they should be broad enough to include inspections on tampering.

You heard the five recommendations he made. Are these sensible recommendations, to the degree that you can comment on that?

Ms. Margaret Meroni: Unfortunately, we don't really have the ability to comment on them, because we are not the ones who would develop regulations or instruments to deal with the recommendations as they are presented. We would defer to our program colleagues, who are the risk managers, to take into consideration and determine whether those are instruments or changes that they would deem appropriate. We are strictly confined to working with them in terms of the enforcement of what ends up being developed. I would definitely need to defer that. I don't think we are in a position to—

• (1640)

The Chair: I think that's something the committee considers.

Hon. Ed Fast: Certainly. This committee will be considering that. We'll be coming forward with recommendations on how CEPA can be strengthened.

Somewhere along the line, it's not going to be only politicians who consider that. It will be civil servants within your department, and perhaps other departments, who will consider whether these are sensible recommendations going forward. I thought you might have a view as to whether these might assist you in doing a better job of enforcing.

Ms. Margaret Meroni: Certainly, in that regard.... Absolutely, if the committee does determine that those recommendations will go forward, we will look at what the organization, the department writ large, is considering in that regard. Where we get involved in terms of any potential drafting of instruments is.... We do get engaged. What we look at, though, is strictly from an enforceability perspective: What is the impact? What is the ability of the officers to enforce the mechanisms that are being put forward? We wouldn't get into the policy aspect of it, as to whether or not it's a good thing to pursue. We strictly look at it in the context of the actual enforceability, once it comes on the books.

Hon. Ed Fast: Mr. Laskowski, I think that's a Polish name, not a Ukrainian name.

Mr. Stephen Laskowski: It is.

Hon. Ed Fast: I know that much.

Voices: Oh, oh!

Ms. Linda Duncan: I was going to say that, too.

Hon. Ed Fast: My colleague Mr. Shields talked about margins. I think it's safe to say that, over the last few years, we've seen a decline in operating margins for the owner/operators. Is that correct?

Mr. Stephen Laskowski: It's a tough industry regardless of the years. I've been in the industry for 22 years. I think there were only a few years in the mid-2000s, when free trade and the American and Canadian economies were gangbusters, when our operating ratios dipped below 0.92.

We're still far away from the class 1s, but it is a tough business. That's not to make excuses.

Hon. Ed Fast: I think you're asking for a level playing field for everybody.

Mr. Stephen Laskowski: Absolutely.

Hon. Ed Fast: Right now the government's enforcement authorities make it very difficult, if not impossible, to achieve a level playing field.

Mr. Stephen Laskowski: I think we need to be clear here too that right now the federal government has no authority after point of sale.

CTA says you should get that same authority and give it to your enforcement officers, as the United States has done.

Mr. Stephen Laskowski: With regard to the provincial governments, we're very keenly aware that you can't tell them what to do, but Environment Canada through the Canadian Council of Ministers of the Environment and through the Council of Ministers responsible for Transportation and Highway Safety could develop a regime around the periodic mandatory vehicle inspection regulations whereby we could address this.

Hon. Ed Fast: Thank you.

Ms. Meroni, you mentioned the AMPs, that you're going to have available very soon or that you do have available.

Ms. Margaret Meroni: They're not on the books yet. They're still going through the gazetting process.

Hon. Ed Fast: Are you enforcing strict liability offences or absolute liability offences?

Ms. Heather McCready: We're enforcing strict liability offences.

Hon. Ed Fast: All right. I know some of the AMPs administered federally cover absolute liability offences, and there is some suggestion that the absolute nature of those offences is being abused by some of our civil servants. We just want to be very careful that this is done fairly. You emphasized fairness, and maybe you could expand on how these AMPs are going to assist you in improving enforcement.

Ms. Heather McCready: I'm going to turn to our lawyer for a minute.

Ms. Linda Tingley (Senior Counsel, Environment Legal Services, Department of the Environment): My role with environment legal services is to work closely and assist and advise the enforcement branch. That's the majority of my practice.

In the administrative monetary penalty scheme that is coming forward, the due diligence defence is not a defence that will avoid a violation from being issued. In that sense it would be considered an absolute liability scheme.

The reason for that is so there will be efficiency in using this tool to avoid the prosecutions, which take a fair amount of time and resources on both sides.

• (1645)

Hon. Ed Fast: I understand the efficiency, but it has to be balanced by fairness. The problem with not being able to use the due diligence defence is that there are times when any rational Canadian would agree this decision is unfair, but it's found liability.

I've seen a number of instances of that. I'm not criticizing you for that. I believe we need AMPs as a tool, but they have to be administered in a fair and sensitive way. That's all I'm saying.

The Chair: You have 10 seconds.

Ms. Heather McCready: I said strict liability, because the rest of what we do is strict liability. AMPs are going to be a new thing for us.

I have the same concerns you do about making sure this is done fairly and consistently across the board in the country. It's going to be new for our program, so we're putting a considerable amount of attention into training officers, making sure they understand where their authority begins and ends, making sure they're advised appropriately, and making sure they're talking to each other. I've always found that's the best way to get fairness and consistency across the country.

I can make a rule and lock everyone down or I can provide opportunities for people to come together and discuss the best thing to do. You're going to be seeing a lot of that, especially in the early years of AMPs. We're going to be watching that very closely, for exactly the concerns that you raised.

The Chair: Okay. Thank you very much.

Ms. Margaret Meroni: Could I add one final point in terms of the administrative review process? There is also the venue where requests for review can be made to the chief review officer. It's an independent entity to look at the review process.

Hon. Ed Fast: Thank you.

The Chair: All right. Thank you.

Next up is Mr. Amos.

Mr. William Amos: Madam Chair, I would simply point out that any concerns about the legality of the AMPs system...the previous government put that in place. I commended the government at the time for a number of changes made to the Environmental Enforcement Act. I think the nature of this conversation is ironic.

Hon. Ed Fast: It's on record. It's a public session.

Mr. Jim Eglinski: Thank you.

Mr. William Amos: I was on the record years ago saying it as well. I'm being consistent.

The Chair: Carry on.

Mr. William Amos: To go back to this access to information aspect, for me it's the paradigm around which we achieve enforcement.

The Chair: We just need to be careful, because obviously they can't, so I'll be mindful.

Mr. William Amos: I know they can't, and I'm not asking them to expound upon policy directions.

The Chair: Okay.

Mr. William Amos: I won't put them in that uncomfortable position. I will try not to, at least.

What I've heard so far, though, from Ms. Meroni is that there are specific mechanisms that are provided for in statutes, some mandatory and some not, which require a certain type of reporting—say, annual reports—and that the energies and the resources that are available are directed toward those required reporting mechanisms or those non-mandatory but statutorily suggested reports. That is why we don't have some other form of reporting, like an augmented publicly available database.

Now, Ms. McCready has mentioned that there is a new database system coming online soon. This is in reference to the NEMISIS system, which is a behind-the-curtain system not available to the public but available if you “access to information” it. As we all know, though, the access to information record of Environment Canada has been challenged in the past.

What I don't understand is why the enforcement branch can't update NEMISIS so that there is a public-facing side that enables access to publicly available information that could be accessed if there were ATIP. If there's a need to protect certain private information, why can't that be kept in a protected space? The United States does that. The United States has across-the-board integrated enforcement information, and we don't. We're upgrading our internal database, and that's good news.

Ms. Heather McCready: It's very good news.

Mr. William Amos: I'm happy for that, but I fail to understand why the public can't access the aspects of that database where the information could be accessed otherwise by ATIP.

Ms. Heather McCready: What you are talking about is a significant undertaking.

Mr. William Amos: Could you describe what "significant" means to you?

Ms. Heather McCready: Go ahead.

Ms. Margaret Meroni: Part of the challenge is that it is a significant undertaking, because there is so much data that does get entered into the system.

Where we focus our efforts, currently, is in establishing information available to the officers to guide and inform the work they're doing. We've been doing a lot of work around creating internal portals for staff, so that they have quick access to information to assist them in the execution of their duties and to have quick resource information available for them. That's really an area we've been looking at more, in having information available.

It goes without saying that trying to create something EPA-like is a very significant undertaking, just from the amount of data that would have to be looked at and extrapolated.

The improvements we have been making to what will be called GAVIA, which is the new information management system that will be replacing NEMISIS, are in an effort to also assist us in being able to extrapolate more information with respect to supporting some of the corporate reporting we're required to do and at some point to integrate with some of the intelligence information we gather, and so forth.

We're taking the small steps as we can to try to make improvements, but they definitely take time, and we are focused very much inward-looking, as well, to support the officers with internal portals.

• (1650)

Ms. Heather McCready: If I can build on your building on my comment, so far, each of these things is a really big piece. It sounds small. You buy a new database system. You just go to the store and you buy one. It's not like that at all for government, and it's definitely not like that for law enforcement. It takes years to do these things, do them right, and make sure that when they're rolled out they don't have bugs in them and people can use them.

We've been spending a lot of time, as Margaret mentioned, focusing internally, and that's not for lack of caring about being able to offer the public more information. It's because our first step is to empower our officers to make sure they have what they need to do their jobs, and it addresses some of the concerns that were brought up in the PSES that Ms. Duncan raised. It's to really make sure that they have the modern technology they need and that they have access to the information they need at their fingertips.

We're putting in place a new database system for officers, which is GAVIA. We're also upgrading the software and the analytical tools our intelligence staff have and putting together some information portals to make sure people all across the country have access to information when they need it.

Those are big projects, many of which are just starting to come to a close in the next little while. What you are talking about is something entirely new.

Mr. William Amos: It's entirely new, except to the extent that civil society has called for it over the past several years.

Ms. Heather McCready: Yes.

What I meant is that we would have to start from scratch, and then it's a whole new initiative.

The Chair: You have 30 seconds.

Mr. William Amos: Okay.

I understand that the focus is on enforcement officers, the internal operations. Is it then the case that the design of this new database system has not been conceived with a view to, down the line, enabling public access, even though there is a stated intention to open government?

Ms. Heather McCready: That wasn't the original design focus. It's not at all precluded by the way it's set up. The way that software works nowadays is that most of these things talk to each other, so it's not impossible at all.

Mr. William Amos: Okay.

Ms. Heather McCready: The main focus was empowering the officers, and that's what it was set up to do.

The Chair: Okay, thank you so much.

Looking at the clock, I'm mindful that we have votes. We also have a subcommittee.

If the committee agrees, we're going to try to go to a quarter after with more questioning. I think we can do that by giving everybody an additional four minutes. We'll then clear the room and start our subcommittee at a quarter after, go to a quarter to, and be able to be in the House for votes. That's the thought that I have.

If everybody's okay with that, we'll add the extra four minutes and we'll work that way.

Are there any issues or objections to that?

Ms. Linda Duncan: We have half an hour for the subcommittee.

The Chair: We're going to have half an hour.

Ms. Linda Duncan: Do we need that?

The Chair: Oh, yes. If it goes faster, great; we'll get out faster. I think we're going to need the half-hour because we have the schedule and witnesses to discuss.

Okay, we'll start with Linda Duncan.

We'll add the extra time, the four minutes, to your three minutes.

Ms. Linda Duncan: Thanks.

I'm curious about what's happening with equivalency on the ground, and the reasons.

I also have to say that I am disappointed. I requested that there be a regional officer here. It's good to hear that headquarters thinks that everything is okay. Perhaps that wasn't passed on to you, but it was my specific request, and it was specifically for that reason. It would have been good to get the assurance. Often, officers on the ground have very different kinds of interests than headquarters types do. I'm hoping at some future time that we can talk to them.

I'm curious to know about what the relationships are now with the provincial enforcement officers, and what role equivalency is playing in that. Recently, there was a co-operative prosecution in the oil sands, and that was pretty unique. Most of the time, what I have witnessed is that the federal government has backed off and the province has proceeded.

Can you tell me a bit about what is happening on the ground now with actual enforcement for violations found under CEPA?

• (1655)

Ms. Heather McCready: Generally you're going to see that it's pretty co-operative. It varies by province, of course, with different relationships in different parts of the country. Some of our laws are more similar to those of some provinces than to those of others. By and large, our regional staff work very closely with the provincial officers.

When you mention that sometimes it looks as though the federal government backs off and the province proceeds, that's not always our choice. There's something called the Kienapple principle, which Linda can probably explain better than I can, but I'll take a stab at it. It basically means that you can't be charged twice for the same offence.

Often what happens is that we work collaboratively with our provincial colleagues. We may actually bring forward charges together. Then, either the prosecutors get together and decide which one goes forward, or, in the end if both go forward, a judge will only find them guilty on one thing. The province gets the news release and we don't, but we were very involved.

I've been quite impressed with how collaborative it's been and how close we are with our provincial counterparts. We are providing training next week for a number of our regional enforcement officers, and we have representatives from the provinces coming there with us, so it's quite close.

Ms. Linda Duncan: What has happened with equivalency? We have a lot of substances that are scheduled and not very many regulations on those. In the cases where we do have those scheduled, my particular interest is in industrial emissions, and less so in the products.

What is happening with equivalency? Are provinces pursuing equivalency agreements, or are they just as happy that both of those laws sit in place at the same time? What is the perspective now with equivalency?

Ms. Margaret Meroni: We don't get involved in the discussions on equivalency. Those are within the regulatory group of the department, so the protection branch or the—

Ms. Linda Duncan: I'm not suggesting that you would.

Ms. Margaret Meroni: Right.

Ms. Linda Duncan: I'm asking, if there can be claims of equivalency, how much of your ability to actually enforce the few regulations and standards you have in place would be impacted by that? Or, by and large, do most of the federal regulations and standards stand on their own?

Ms. Heather McCready: I don't think equivalency has had much impact. You say we have few laws, but we have two major acts and more than 60 regulations. There's actually quite a lot that we're enforcing.

I haven't seen equivalency happen—

Ms. Linda Duncan: We're just talking about pollution here.

Ms. Heather McCready: Just for CEPA there are more than 60 regulations.

I haven't seen equivalency have much of an impact on this at all. I'm seeing equivalency discussions happening right now more on the Fisheries Act side, with the wastewater regulation, but not so much on the CEPA side.

Ms. Linda Duncan: That's interesting.

I was disappointed to hear that the administrative penalties have taken so long. When I was chief of enforcement, I worked with Treasury Board and the justice department. We actually went to the United States and were proposing this. Environment Canada was the only department interested at all in pursuing it.

I thought that was a good thing that Jim Prentice did, and I'm surprised at how long this has taken. What has been the problem with bringing forward those measures? There have been many complaints from the public because you keep issuing all these warnings.

Then of course the next step was simply to prosecute. The AMPs provide a good middle ground if you just have a one-off—if you haven't labelled your facility for waste storage properly, and so forth. What have really been the problems with delivering on this, which is a good on-the-ground mechanism?

Ms. Margaret Meroni: Unfortunately, we don't control the regulatory process. We are engaged and will provide input to it from an enforcement perspective, but I would definitely have to defer to program colleagues to provide some insight into any challenges or impediments they may have faced. We're really not aware or equipped to respond.

Ms. Linda Duncan: I have one final question, if I have a little time.

The Chair: You have time.

Ms. Linda Duncan: One controversy for quite some time was that the department wouldn't release information on warnings. The violators complained that this was violating their charter rights, because they couldn't contest a warning.

Are the warnings now fully publicly available?

Ms. Heather McCready: Statistics on them are; we can tell you about numbers. Individual warning letters are not, unless someone goes through the access to information process.

There's a privacy right involved there: the person who was subject to the warning letter has a privacy right. There's no finding of guilt with a warning; there's no admission of guilt; and there's no particular standard of proof, if an officer has noticed something and is bringing it to the attention of a violator. It is still subject to privacy laws.

Ms. Linda Duncan: You mentioned that you have a suite of policies and protocols. When CEPA was first enacted, then minister Tom McMillan made a profound statement, which I'm sure you're aware of, that a law is hollow unless it's effectively enforced. Of course, under the North American Agreement on Environmental Cooperation, we as a country commit that we will effectively enforce.

Do you now have in place a formal enforcement and compliance policy, and is it public?

• (1700)

Ms. Margaret Meroni: Yes. We have three enforcement and compliance policies specifically: one under CEPA, one for the Fisheries Act, and one for wildlife as well. We can certainly provide the web links. These policies are publicly available; in fact, we refer to them frequently when we respond to correspondence that we receive.

We also have a suite of internal policies that cover everything from administration to officer conduct to the wearing of the uniform, the use of the fleet, and so forth, and a whole series of internal administrative policies as well to assist officers.

Ms. Linda Duncan: Here is one last quick question. Mr. Eglinski will appreciate this one.

In my time, the enforcement officers were reaching MOUs with the RCMP to help to deliver search and seizure orders and so forth.

Do you still proceed that way, or do you do all of that work on your own now?

Ms. Heather McCready: We have many agreements with many partners for exactly that reason. We're specialists in environmental enforcement. We look to partners for help with such things as computer forensics and also to provide security backup when necessary. The pollution enforcement officers don't have sidearms, so if we're going into a dangerous situation, frequently the RCMP will assist us.

We work with lots of different agencies, the provinces, and Canada Border Services Agency. The Competition Bureau has provided computer forensics support in the past. It's a real team effort, for lack of a better expression.

The Chair: Thank you very much.

Mr. Eglinski, you have four minutes.

Mr. Jim Eglinski: I'm just going to ask a quick question and pass the rest of my time over to Mr. Fast.

Stephen, there was a little confusion coming around when Mr. Shields asked you a question about the defeat devices.

In my experience in western Canada, many people were going to the defeat devices not to beat CEPA but in frustration about the trucks breaking down and their not being able to provide a service to their customers, or not being able to get home or get the load there. I just want to see whether that's the feeling you find across Canada. Most of them were doing it just out of frustration with the manufacturers not having a good product out for awhile.

Mr. Stephen Laskowski: I would characterize that as correct.

Mr. Jim Eglinski: Okay. Thank you.

Mr. Fast.

Hon. Ed Fast: Thank you.

I have a further question for Mr. Laskowski. There was a question earlier on electronic log-in devices. They're presently not mandatory in Canada.

Mr. Stephen Laskowski: That's correct.

Hon. Ed Fast: Does anyone use them in Canada?

Mr. Stephen Laskowski: Yes. I'd say about 30% of the fleets use them.

Hon. Ed Fast: All right, so this is technology that improves enforcement capabilities.

Mr. Stephen Laskowski: Absolutely.

Hon. Ed Fast: In the United States, is it mandatory?

Mr. Stephen Laskowski: It has been introduced, and it will be mandatory and put into place for 2018.

Hon. Ed Fast: Okay, and you're recommending that Canada follow suit.

Mr. Stephen Laskowski: Absolutely.

Hon. Ed Fast: All right.

Second, you mentioned the state of technology today and that it actually hasn't quite kept up with the requirements imposed on the trucking industry.

Mr. Stephen Laskowski: Yes.

Hon. Ed Fast: I take it that the fact that you're making that statement here today at this table means the technology is still not up to date.

Mr. Stephen Laskowski: You know, it's a question of not just being up to date but being able to function in this market. The U.S. trucking industry operates under very different operating conditions and in very different geographic conditions. The problem with importing our machines and our trailers is that many of them are manufactured in the United States and built for that marketplace. That is why our recommendations are in place. You need testing to ensure that a product that is brought up into Canada meets our standards.

As a simple analogy, if a car is imported from the United States, we have different lighting requirements under Transport Canada. The same thing could apply for trucking, with wiring, for example. There's not too much snow in Arizona and you don't have to worry about wiring your environmental control devices to withstand erosion; in Canada, we do. Let's make sure that what we're importing into Canada will work here.

Hon. Ed Fast: Okay. That makes sense.

Ms. Tingley, going back to strict versus absolute liability, under an absolute liability offence, there really is no defence; is that correct?

Ms. Linda Tingley: No, there isn't, other than to say it wasn't me; I didn't commit the offence.

Hon. Ed Fast: Right.

• (1705)

Mr. Jim Eglinski: I've heard that a lot.

The Chair: I just happened to show up there.

Hon. Ed Fast: Would the administrative monetary penalties that our government brought in, which hopefully are going to be implemented soon, which Mr. Amos spoke so approvingly of, actually extend into the transportation industry?

Ms. Linda Tingley: They are available, or they will be available, for some violations under the Canadian Environmental Protection Act, but offences that would fall under Transport Canada's responsibility would be in a separate regime.

Hon. Ed Fast: Okay. That would be a separate regime, which presumably doesn't have absolute liability offences.

Ms. Linda Tingley: I'm sorry, but I am not knowledgeable about that.

Hon. Ed Fast: Okay.

Thank you. Those are all my questions.

The Chair: You're out of time. That was perfect timing.

Mr. Badawey, you're going to share your time with Mr. Bossio.

Mr. Vance Badawey (Niagara Centre, Lib.): I'm going to try to. Thank you, Madam Chair.

I have a quick question.

Ms. Meroni, you made the comment earlier about how proactive work is essentially planned inspection activity, predicated on risk-based planning, as well as informed through intelligence, which establishes national and regional priorities and projects.

My question is twofold. One, how do you establish that? Do you establish that through phytotoxicity reports, human health risk assessments, site-specific risk assessments, environmental assessments, one and two? That said, my second question would be how you then deal with that. Are you then into a remediation stage? Are you then into a stage of responding accordingly if in fact those health risk assessments show something?

I'm going to try to get all my questions in here, because I have only so much time.

My third question is, with respect to that, for the contaminants of concern that may not have science attached to them, science has to

be established, and there's a certain parts per million level already established. Let's say it's 200 ppm; if in fact there's no science for that contaminant, that's the usual amount. When the science is then created, and I'm assuming you would do that, the ppm level is changed. Thus I go back to my second question: what's then done about it?

My last question is what happens when all that is contained within federal lands?

Ms. Margaret Meroni: We will tag-team on that. That was a lot. Wow!

The Chair: You have three minutes.

Ms. Heather McCready: We'll do our best.

Ms. Margaret Meroni: Okay, we'll do our best.

In terms of identifying what the priorities will be for establishing the national enforcement projects for any given year, we do an annual call-out, and we speak to our regional staff. That's done through Heather's regional directors. We also speak to our science and technology branch colleagues. We speak to the program managers who are in the protection branch who actually developed the regulations. We collect various perspectives in terms of where we should actually focus our efforts.

Part of that will also be based on the intelligence that we generate within our own organization. We collect a lot of that information, and then there's a bit of a filtering process. We can't do everything that may conceivably come forward, and that's why, as I stated in the opening, there's a certain level of risk-based decision-making that is done in terms of what we can physically undertake. Then we deem where the most important areas of concern are, where the highest degree of non-compliance that we're aware of is, as well as where the largest environmental harm is.

To that effect, basically in terms of any science that informs, that's where we will be looking to our science and technology branch colleagues, who also work with the program in terms of where they develop the regulations. Then, where do we see those regulations requiring some enforcement action?

If it is a newer regulation, or even if it is one that's been on the books for a while, we also work very closely with our colleagues who are separate from us, those responsible for compliance promotion. They work with the risk managers, the developers of the regulations, to do a certain amount of exactly that, compliance promotion. They work with the people who are regulated so they're aware of what their requirements are in order to be in compliance with the regulations as they're developed.

It's always an evergreen process. You see that regulations do get amended based on new information that comes forward and evolves. We work with all of those colleagues to establish what the priorities will be, and then develop the inspection plans. Not all inspection plans have to be delivered equally across the country, depending on the representation of the industrial sectors and the regulated communities.

Ms. Heather McCready: You also asked what is done about it. It really depends on the problem.

One of the things we're doing currently with our annual planning process is to come up with new and innovative ways to deal with problems. Primarily regional staff work on that. We have a manager at headquarters who leads it, but she works with a manager from each region. They roll up a lot of the input from their region to look at the problem and figure out the best enforcement intervention to solve that problem. Then we bring in people at the officer level, and they sit on working groups for the various regulations, and they're really the experts on that regulation in that regulated community. They come in as well to talk about how to make it really practical and tangible on the ground.

• (1710)

Mr. Vance Badawey: Are there more laws for federal lands?

Ms. Heather McCready: There are more CEPA laws and regulations that apply to federal lands, but we don't treat federal departments differently than companies, so we do charge them.

Mr. Vance Badawey: Mike.

The Chair: You have just 30 seconds.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Are there any regulatory restrictions to stop you from making data open to the public, to follow up on Will's line of questioning on opening up? Are there any regulatory restrictions on your opening that up to the public? Is it really just policy direction and dollars?

Ms. Heather McCready: It's the Privacy Act.

The Chair: Okay.

Mr. Mike Bossio: Thank you.

The Chair: Thank you very much. It's been an excellent session. I really appreciate all that you've shared with us. We've have very good questions all around the table, with very succinct and very informative answers. We really appreciate the time you've spent with us today, and what you've shared with us. We're going to go into a closed session shortly, so we will ask people to clear the room.

The meeting is adjourned.

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