

# GR When You Have Few Friends: The Case of Controversial Industries

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# Introduction

- Any opinions expressed in the following presentation are personal and do not represent the views of any clients.
- Over the past 24 years advised a broad range of interests and implemented strategies dealing with a wide variety of controversial issues.
- Controversial GR? Try being a lobbyist for:
  - Defence industries, when defence was unpopular
  - rBST, when wholesome, pure milk is popular
  - Shell Nigeria
  - PCB waste exports
  - 2,4-D
  - Bisphenol A
  - Silicone breast implants

# Challenges presented by today's public affairs environment

- The public is scientifically illiterate. In part because of this illiteracy, the public has no concept of risk assessment/risk management.
- Environmental groups in Canada have become well funded – thanks to government, corporations, foundations and US counterparts.
- Some high profile advocacy groups have moved away from their original core scientific values.
- Government – at all levels – has become more reactionary, moving away from core science-based policies.
- Court decisions have changed the landscape of which level of government can regulate and the responsibilities of companies.
- The meaning of 'The Precautionary Principle' has evolved significantly.
- As well, the public has no concept of what a part per billion is, yet a finding of a ppb of certain hot button chemicals strikes fear in the public heart.

# What is a billion?

- In society's quest to chase the 'disappearing zero' let's keep in mind what a billion is:
  - A billion seconds ago, it was 1976.
  - A billion minutes ago, Jesus was alive.
  - 263 billion hours ago (3 million years), our ancestors were living in the Stone Age.
- The public mind is not wired to grapple with very large numbers – or parts thereof. The human brain has not developed from the period when 100 was a large grouping.

# Separating High Quality Data from “Headline” Science in the News

The research studies picked up by the general news media typically have one or more design flaws:

- Ignore or downplay the conclusions of expert panels and regulatory agencies which have considered the weight of scientific evidence generated by means of Good Laboratory Practice (GLP) studies.
- Place greater emphasis on epidemiological studies which show a positive association and often ignore studies which have a negative association.
- Misrepresent the findings of studies and/or selectively report certain data in isolation of overall findings.
- Manipulate the data to reach predetermined conclusions.
- Do not consider exposure, or lack thereof.
- Ignore biological plausibility.

# A double standard at play?

- On Friday, Health Canada/Environment Canada issued a decision on a group of compounds (D4, D5 & D6 siloxanes):
  - “The final assessments conclude that siloxanes are not a concern for human health, based on the amount of these substances that an individual would be exposed to through the use of various products, including personal care products.”
- Within two hours, Environmental Defence issued its news release:
  - “D4 siloxane has been linked to harmful developmental effects, impaired fertility, liver damage and cancer. D5 has also been found to be a potential carcinogen. Siloxanes are persistent and bioaccumulative, meaning they remain in the environment, and the human body, for a very long time. Government assessments also found them to be “inherently toxic” to wildlife.”

# Statutory criminal sanctions for industry

- Section 40 of the Pest Control Products Act states:
- *(2) Every person who commits an offence under subsection (1) is liable*
  - *(a) on summary conviction, to a fine of not more than \$200,000 or to imprisonment for a term of not more than six months, or to both; or*
  - *(b) on conviction on indictment, to a fine of not more than \$500,000 or to imprisonment for a term of not more than three years, or to both.*

# What is GLP Research?

- Under several statutes, government requires Good Laboratory Practice (GLP) studies from corporations.
- Research must follow specified protocols with each step documented.
- Only GLP qualified facilities and personnel can be used.
- GLP research is demonstratively valid. In other words, if anyone wishes to conduct the research – then the results should be reproducible.
- An unintentional GLP violation can invalidate the study. An intentional GLP violation can be a criminal offense.
- If studies that make the headlines in the news media today were of GLP quality, quite likely the debate we are witnessing would not be occurring.

# Protecting sound science policy

- Decisions on science driven subject matters based on public opinion leads to a simple question: what's next?
- An advanced economy such as Canada's must make public policy decisions on the basis of scientific data considered on a weight-of-evidence basis.
- Failure to abide by clear well defined scientific criteria will spurn investment and innovation and ultimately introduce new and unintended risks to human health and the environment.

Pesticides kill  
weeds & bugs ...

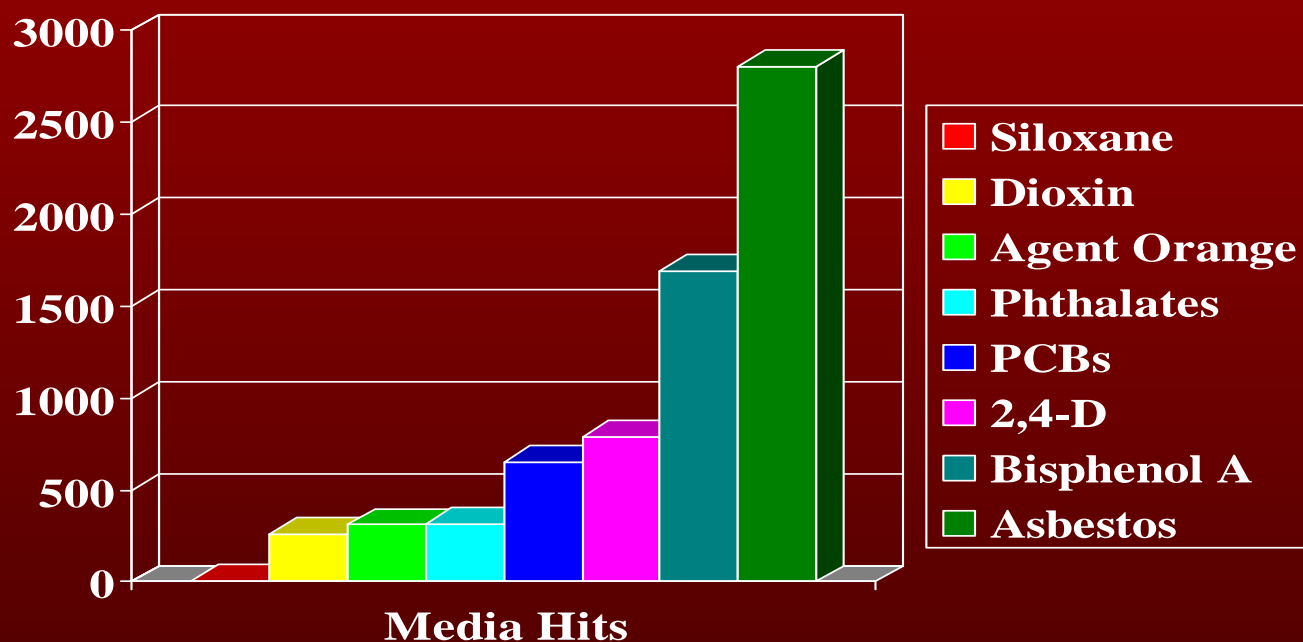


... who's next?

# Three axioms for controversial GR

- First do no harm, if the subject matter has no public profile, keep it that way.
- By definition, it is nearly impossible to win on the basis of public opinion. One must therefore use all the regulatory and procedural tools available to achieve the corporate objective.
- While economics are important, health and the environment always trump everything else.

# Rule # 1: First do no harm in the media



Source: FPInfomart. Included in the searches for each term are all Canadian daily English language newspapers, weekly news magazines and major television networks (CBC, CTV and Global) for the 12 month period ending October 30, 2008.

## Rule # 2: Use every available tool

- Case study Quebec Pesticides Code:
  - Engage before the public consultation process
  - Present the scientific evidence
  - Persistent advocacy involving the value chain
  - Use Access to Information to follow the internal dialogue
  - Keep government apprised of regulatory developments
  - When all else fails, turn to the lawyers

# Quebec Pesticides Code

- In July 2002, first draft of the Quebec Pesticides Code published for public comment.
- After requests from industry, Quebec released a background report entitled "Methodology for Establishing the List of Prohibited Active Ingredients (Annex I)". This report is dated August 2002.
- In determining the sources relied upon for inclusion in Annex I, the report stated:
  - "The reference sources consulted for the cancer risk assessment are the International Agency for Research on Cancer (IARC), the United States Environment Protection Agency (EPA), the United States National Toxicology Program (NTP) and the California Environmental Protection Agency."
- Based on the government's interpretation of the IARC classification, 2,4-D was included in Annex I.

# Quebec Pesticides Code

- The report's conclusions drawn from the IARC review in 1986 are unfounded and indeed the government determined the scientific criteria did not support its original finding.
- March 5, 2003, Quebec announced that it was adopting the Code, and the accompanying Annex I and issued a revised "Methodology for Establishing the List of Prohibited Active Ingredients".
- The March 2003 report continued to recognize IARC as its basis for inclusion of the Active Ingredients in Annex I. However, the government changed its criteria:
  - "In fact, it is currently difficult to justify scientifically the introduction of these active ingredients taken individually, on the basis of this criterion. Given the doubt that persists, they are maintained on the list pending the outcome of the reassessments in progress."

# Quebec Pesticides Code

- Clearly the scientific evidence – and regulatory decisions in Canada and abroad – support industry's position.
- The Canadian government negotiates trade agreements with investment provisions to protect investors against arbitrary and capricious actions.
- In weighing options, companies must consider the long term implications of having other governments in North America and around the world believe Quebec's decision is valid without understanding the scientific deficiencies.
- For an industry that is regulated entirely on the basis of scientific evidence, the underlying regulatory tenets must be defended.

## Rule # 3: While health and environment are the trump cards, economics remain important

- The underlying tenet of PCPA, CEPA and other federal statutes is similar:
  - *For the purposes of this Act, the health or environmental risks of a pest control product are acceptable if there is reasonable certainty that no harm to human health, future generations or the environment will result from exposure to or use of the product, taking into account its conditions or proposed conditions of registration*
- Economic costs becomes important when considering risk management strategies. For 2,4-D, economic analysis found:
  - Of the 34.7 million acres of wheat and barley in Western Canada, over 90% were treated one or more times with phenoxy herbicides (2,4-D, MCPA, mecoprop) in 2005 at a cost of \$170 million.
  - If all three phenoxy herbicides were removed from the Canadian market, additional weed control costs would amount to \$224 million as producers turned to more expensive, less effective herbicides. Revenue losses from yield decreases approximately \$114 million.
  - Total added costs to Canadian farmers = \$338 million.

# 24 Years: 12 lessons learned

- Play to your strengths: science and the rule of law
- Form alliances with those with shared values for science and due process
- Develop clear and consistent advocacy plans (objectives, message, targets, vehicles & timing)
- Advocacy efforts must be structured and coordinated amongst internal and coalition participants
- Align with public interest and government agendas and promote that way
- Integrate with overall corporate strategy

# 24 Years: 12 lessons learned

- If you can find political leverage, deploy it and find a politically acceptable solution
- If you can't, make a choice about the long term implications of the regulatory action as it affects other markets
- Never under-estimate the political strength of your opponents
- Nurture relationships over the long term
- Allocate adequate resources to the planning, coordination and execution of initiatives
- Know the law, hold government accountable