



AmericanCoatings
ASSOCIATIONSM

December 9, 2020

The Honourable Jonathan Wilkinson, P.C., M.P.
Minister of the Environment and Climate Change Canada
c/o The Executive Director Program Development and Engagement Division
Department of the Environment
Gatineau, Quebec K1A 0H3
eccc.substances.eccc@canada.ca

RE: Notice of Objection to the Proposed Order to add plastic manufactured items to Schedule 1 to the *Canadian Environmental Protection Act, Canada Gazette, Part I, Volume 154, Number 41: Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999*

Dear Mr. Wilkinson,

ACA is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. Our organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

In the United States, the coatings industry employs over 311,000 individuals in manufacturing facilities, warehouse and distribution facilities, retail locations and in the service industry as painting professionals. It is a \$29 billion dollar industry with a wide network of upstream suppliers and downstream users providing important coatings products to essential industries such as the food and produce industry, healthcare industry, military bases, transportation infrastructure like highways, bridges and airports, automotive industry, consumer goods including food and hygiene products, and real estate such as home construction as well as maintenance and repair.

The industry's network spans North America and indeed, Canada is America's most important trading partner. The coatings industry is a perfect example of this robust relationship. The U.S coatings industry exports a wide range of products to Canada, valued at over \$1 Billion annually. This stream of commerce supplies paint and coatings products in the architectural, industrial and specialty coatings markets to end users in Canada.

The proposed order referenced above seeks to designate plastics and plastic manufactured items as toxic under CEPA Schedule 1. ACA appreciates the opportunity to provide comments on this issue.

The American Coatings Association objects to the proposed order to add “plastic manufactured items” to Schedule 1 of CEPA for the following reasons:

1) CEPA is Designed to Address Chemicals Management, Not Waste Management

While it is clear that the *Canadian Environmental Protection Act, 1999* (CEPA) provides authority to regulate substances in order to protect the environment and human health, this authority is best focused on chemicals management activities where it is possible to conduct risk analyses and identify the specific issue for a specific chemical or chemical group. A risk analysis makes it possible to develop a regulatory action that is tailored to the identified risk of the chemical or chemical group.

In this instance, however, rather than identify a substance such as a specific chemical, chemical group or even a specific technology, Canada is proposing to regulate a very broad range of complex, finished products as well as their component parts under CEPA. The definition of “plastics” and “plastic manufactured items” is extremely broad and confusing. The complex nature of the scope of application will make it very difficult to implement and reap any positive benefits as the seminal question for manufacturers and regulators alike will be “is the product in or is it out?”

It should be noted that “plastics” and “plastic manufactured items” are made of polymeric compounds. There are thousands of unique polymers in use today and each such polymer has its own chemical identity and characteristics. While the proposal recognizes some of these distinct chemistries, the science assessment neglects to address these unique plastics with any specificity. Consequently, there are no findings relative to a risk assessment that consider use, exposure and environmental fate for any specific plastic or polymeric compounds. Therefore, it does not make sense to move forward with the proposal to designate “plastics” and/or “plastic manufactured items” as toxic under CEPA. ACA urges Environment and Climate Change Canada to reconsider this strategy and continue to focus its efforts on waste management efforts to address plastic pollution.

2) The proposal to Designate “Manufactured Plastic Items” as Toxic under CEPA Schedule 1 is inconsistent with Canada’s International Trade Obligations

On July 1, 2020, the Canada-United States-Mexico Agreement (CUSMA) entered into force. Canada had already completed its ratification process in March and notified the United States and Mexico in April of this fact. This proposal, however, flies in the face of Canada’s obligations under the CUSMA. Not only is it in violation of specific requirements of the CUSMA, taking this action is completely inconsistent with the spirit of the agreement.

The terms of the USMCA require parties to use a risk-based approach to the assessment of specific chemical substances and mixtures. Specifically, Canada, the United States and Mexico agreed to make efforts to align their respective risk assessment methodologies and risk management strategies so as not to create technical barriers to trade. See Sectoral Annex 12A.4.3

As discussed above, the final Science Assessment is not accompanied with a risk-based approach. It does not fulfill the requirement for a final screening assessment and is an insufficient basis for such a broad, undefined category of products.

Further, the Technical Barriers to Trade Chapter of the CUSMA (Chapter 11) and the World Trade Organization's TBT Agreement¹ require signatories to "ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade". Specifically, the TBT Agreement requires that "technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create." These obligations require that Canada consider the impact on trade between the signatory countries and avoid developing "unnecessary obstacles to international trade."

In this instance, ACA encourages Canada to give full consideration to the current waste management strategies that focus on source reduction, re-use and recycling as these options are less "trade-restrictive," focus on the identified problem – plastic as waste, rather than plastic manufactured items, and would avoid unnecessary obstacles to international trade.

This proposal clearly jeopardizes Canada's trading relationships and should be withdrawn in favor of less trade-restrictive strategies.

Conclusion

ACA urges Canada to continue engage stakeholders in this issue and provide additional opportunities for discussion. ACA is working closely with our Canadian colleagues in the coatings industry, the Canadian Paint & Coatings Association (CPCA) in evaluating and responding to this proposal.

In addition to the discussions above, there are additional factors that should be considered:

- Plastics and plastic manufactured items have played an important and unique role in society's response to COVID-19 pandemic. Gloves, plexiglass, and medical supplies and equipment, all plastic or containing plastic components, have enabled our first responders and health care workers to work diligently to treat patients while mitigating risk to themselves and their families. In addition, these products have allowed other essential

¹ Specific sections of the WTO TBT Agreement are incorporated into the CUSMA. See Article 11.3

workers to maintain their activities in order to keep food items and other necessities in commerce and available to the public at large. ACA is concerned that this proposal will inhibit response efforts now and in the future, in absence of sustainable and safe alternatives being identified.

- The science assessment readily admits that additional research is necessary on the impact of microplastics on human health and the environment. The assessment also indicates that exposure to macroplastics (as pollution or otherwise) is not expected to be of concern for human health. ACA is concerned that this proposal is premature as the research is not yet complete and does not support such action. In addition, ACA believes that it would be more prudent to address microplastics and macroplastics with different and appropriate waste management strategies.
- Plastic waste and marine debris are the subject of numerous conversations in the legislative, regulatory and policy arenas around the globe. There are numerous waste management strategies currently employed, and in development, to eliminate plastic waste and encourage reuse and recycling. Many of these strategies are in place in the provinces of Canada and should be explored further with public and private stakeholders, rather than move forward with a proposal that is inconsistent with the history and tradition of CEPA.
- Sound science is the cornerstone of CEPA and this cornerstone should not be damaged by the development of a chemical management strategy without a robust science assessment that provides findings on the risk assessment of the use, exposure and environmental fate of specific polymeric compounds.

Again, ACA welcomes the opportunity to continue this dialogue with the Canadian Paint & Coatings Association, the Government of Canada, the CEPA Industry Coordinating Group and other public and private stakeholders. We urge the Government of Canada to fully consider the comments provided herein as well as those submitted by the Canadian Paint & Coatings Association and take steps to focus the appropriate waste management strategies on this issue.

If you have any questions at all, please do not hesitate to contact me.

Respectfully Submitted,



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Vice President, Government Affairs