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December 9, 2020

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

Re: 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 Minister Wilkinson:

AMERIPEN – the American Institute for Packaging and the Environment – wishes to formally object to the Government of Canada’s proposed order to add plastic manufactured items to Schedule 1 of the Canadian Environmental Protection Act (CEPA). Furthermore, we respectfully request the establishment of a Board of Review to fully review the proposed order before anything is perhaps implemented.

AMERIPEN is a coalition of packaging producers, users and end-of-life materials managers dedicated to improving packaging and the environment in North America. Our membership represents the entire packaging supply chain, including materials suppliers, packaging producers, consumer packaged goods companies and end-of-life materials managers. We have members headquartered in Canada and many of our member companies conduct commercial operations in both Canada and the United States.

We believe the proposed order to add plastic manufactured items to Schedule 1 of CEPA lacks a proper screening assessment, is based upon an incorrect toxic designation, and is inconsistent with the Government of Canada’s commitment to strengthen science in government decision-making. Furthermore, the proposed order has serious potential trade implications that have not been fully vetted. Details on these concerns follow.

Lack of Screening Assessment

The final *Science Assessment of Plastic Pollution* released by the Government of Canada in October 2020 that is part of the basis for adding plastic manufactured items to Schedule 1 of CEPA lacks a screening assessment of such items. This is a critical component of the Government of Canada’s Chemicals Management Plan (CMP) initiative. Had such a screening level risk assessment been conducted, we believe a significant weight of evidence would have led to a different conclusion – that the chemical and physical properties of plastic manufactured items do not pose the risk to the environment suggested by the final

science assessment. Furthermore, the final science assessment was published without a comprehensive review of existing scientific literature, thereby compromising the ability to fairly evaluate if plastic manufactured items really have the potential to cause ecological harm in Canada.

Furthermore, aggressive global and regional public-private commitments and partnerships are already in place to drive solutions to reduce plastic waste and marine debris and should be given an opportunity to work. Global waste, litter, and marine debris challenges will be better served under solutions through these types of partnerships rather than through CEPA, and we strongly urge Environment and Climate Change Canada and Health Canada to consider these alternatives. In the event that CEPA continues to be used as a platform for regulatory decision making regarding plastic manufactured items, we urge you to consider the basis for specific risk and screening assessments supported by complete scientific assessments for each specific plastic product, packaging, or resin as warranted.

Incorrect Toxic Designation

We appreciate concerns over the international movement of plastic waste and its impact on ocean debris, and we recognize how classifying plastics as toxic under CEPA may help restrict its global movement. However, the generalized approach in the final science assessment to classify all macroplastics and microplastics as toxic, regardless of how they are used or disposed, lacks an adequate scientific foundation and is therefore not legally or technically sufficient. Given that plastics in the environment is fundamentally a consumer behavior and solid waste issue and not a chemical management one, we do not believe CEPA is the right regulatory framework to conclude that plastic manufactured items pose an unacceptable risk to the environment.

Even though AMERIPEN is a material-neutral trade association, classifying any material, plastic or otherwise, as “toxic” when that clearly is not the case from a toxicological perspective is simply not justified. We also encourage you to consider the potential health consequences of making a CEPA toxic determination that the public will associate with plastics, plastic packaging, or resins – a determination that surely will be misunderstood and misinterpreted by the public.

Government Commitment to Sound Science

A scientific Board of Review should be established to fully evaluate the proposed order to add plastic manufactured items to Schedule 1 of CEPA. This would be consistent with Prime Minister Trudeau’s instructions in the Minister’s mandate letter to ensure that “(t)he Government of Canada is committed to strengthen science in government decision-making and to support scientists’ vital work.” A review board would have no vested political interest in the outcome of the investigation and could help identify data and other gaps in work that has led to the proposed order.

The final *Science Assessment of Plastic Pollution* released in October 2020 itself identified several “knowledge gaps” meriting further research, including developing standardized methods for sampling, quantifying, characterizing, and evaluating the effects of macroplastics and microplastics, and furthering the understanding of the ecotoxicological effects of microplastics. A review board could help fill those gaps that precluded the final science assessment from conducting a quantitative risk assessment.

Trade Considerations

A truncated and incomplete CEPA review that bypasses risk assessment is also inconsistent with Canada's strong science-based ethos and its commitments to risk principles under the recently signed Canada-United States-Mexico Agreement (CUSMA). This agreement contains innovative provisions regarding regulatory cooperation for chemical substances (CUSMA Chapter 12.A – Sectoral Annex for Chemical Substances) that will support North American industries' global competitiveness and grow jobs in our sectors for producers and downstream users of chemical products, including packaging manufacturers. CUSMA also contains critical obligations for each party to take measures to prevent and reduce marine litter (CUSMA Chapter 24.12 – Marine Litter) and to cooperate with others to address matters of mutual interest on the same. CUSMA can establish the gold standard for how governments and industry can work together to address chemical substances and reduce and prevent marine litter and we encourage you to contemplate that within the context of the proposed order.

We are also concerned that the proposed order and its implementation could be more trade restrictive than necessary to fulfill a legitimate objective and therefore inconsistent under Article 2.2 of the World Trade Organization Technical Barriers to Trade (WTO TBT) Agreement. Consistent with Canada's obligations under Article 2.9 of that agreement, we therefore respectfully request that you notify the TBT Committee of the proposed order and any resulting measures.

As you engage with your government colleagues, we also urge you to reach out to officials in the United States government, including at the Office of the United States Trade Representative, the United States Department of Commerce, and the United States Department of State, to understand their perspectives and to facilitate further bilateral discussions on the regulation of chemical substances and reduction of marine litter. Environmental laws and regulations should be designed with the utmost care to ensure that they are effective in achieving their desired objectives while at the same time avoiding unnecessary adverse social and economic impacts.

Global Pandemic

As mentioned in our previous letters to the Government of Canada in May and September of this year regarding classifying plastics as toxic under CEPA, we remain deeply concerned that moving forward with risk management action under CEPA could jeopardize public health given the key role that many plastic products, including for packaging, play in health and safety – particularly while the global coronavirus pandemic persists. As Canada and the rest of the world continue to grapple with the pandemic, single-use plastics are playing a critical role every day in preventing further spread to vulnerable populations. Sanitary, single-use plastics are right now delivering critical health and safety benefits across a wide range of products and packaging, including surgical and medical gowns; N95 respirators and face masks; protective sheeting; single use disinfecting wipes; surgical gloves and other gloves; packaging for medical devices, medicines and pharmaceuticals; food service and storage packaging; and a wide variety of other critical goods and services. Moving forward with a CEPA toxic determination at this time could confuse consumers, businesses, and others and lead to choices that impede the global coronavirus response, impacting public health and safety and potentially the spread of the virus.

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Again, we object to the Government of Canada's proposed order to add plastic manufactured items to Schedule 1 of the Canadian Environmental Protection Act (CEPA) because it lacks a proper screening assessment, is based upon an incorrect toxic designation, and is inconsistent with Government of Canada's commitment to strengthen science in government decision-making. At minimum, a Board of Review should be established to fully review the proposed order before anything is implemented.

We also encourage the Canadian government to fully consult with agencies responsible for the regulation of products where the designation of plastics as CEPA toxic would have a disproportionate impact on packaging and other items critical to health and safety. Canada's policy on single-use plastics should be informed by sound science, careful deliberation, a robust public comment process, and clear coordination with its trading partners. This is important to both the global trade system and to our collective ability to address and successfully recover from the global coronavirus pandemic.

Thank you for your consideration of our concerns.

Sincerely,



Dan Felton
Executive Director – AMERIPEN

cc: Patty Hajdu, Minister of Health Canada
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