CANADIAN MANUFACTURERS & EXPORTERS

MANUFACTURIERS & EXPORTATEURS DU CANADA

Canadian Manufacturers & Exporters (CME) Submission

Notice of Objection and Request for Board of Review in relation 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

To:

The Honourable Jonathan Wilkinson, P.C., M.P.
Minister of Environment and Climate Change Canada
c/o The Executive Director Program Development and Engagement Division
Department of the Environment
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Submitted via e-mail: eccc.substances.eccc@canada.ca

Introduction:

Canadian Manufacturers & Exporters (CME) welcomes the opportunity to respond to the Government of Canada's proposed order adding "plastic manufactured items" to Schedule 1, the List of Toxic Substances (Proposed Order), under the *Canadian Environmental Protection Act* (CEPA) published on October 10, 2020 in Canada Gazette, Part I, Volume 154, Number 41.

CME actively works with all levels of government across the country on a broad range of current efforts towards reducing the impact that each of us has on the environment. This includes the overarching objective to reduce emissions and waste, including plastic waste. However, CME cannot support the suggested approach to utilize CEPA to regulate plastic manufactured items. Thus, as permitted by CEPA section (2), CME formally objects to the proposed order and requests the establishment of a Board of Review under section 333 of CEPA to review the recommendation for the reasons below.

The Inappropriate Use of CEPA:

The use of CEPA Part 5 and Schedule 1: List of Toxic Substances requires, among other things: decision-making on a foundation of science and evidence, a disciplined focus on a single "substance" from risk assessment through risk management (when needed), and a risk assessment that includes a determination that the substance meets one or more of the criteria in CEPA Section 64. For the Proposed Order, none of the above requirements have been met. No decision on CEPA-toxicity has been made based on science and evidence. Moreover, plastic waste is not the same as Plastic Pollution. Neither is equal to 'Plastic Manufactured Items' but the data in the final Science Assessment of Plastic Pollution ("science report") flips from plastic waste to plastic pollution and back without discipline and no mention of 'plastic manufactured items' are made in the science report at all.

CEPA Part 5/Schedule 1 is the wrong tool, wrong approach to solve the wrong problem. CEPA was not designed to deal with waste management issues or regulating plastic manufactured items. CEPA was designed to safely, and in a targeted way, manage substances that are of urgent, acute, or long-term

risk to human health (e.g., asbestos) or the environment. Grouping all items of a specific material class together like what is being proposed with plastic manufactured items into a similar categorization and labeling it as a toxic substance is problematic. More broadly, this step will send a strong signal to investors in the sector that Canada is closed for business, at a time when the country can least afford it. It will not only increase operational costs for industry, but also harm manufacturers' ability to secure plastics and inputs for product creation and development on a wide variety of products. And it will limit the availability of products to Canadian consumers from both domestic and international sources.

Cause and Effect Not Established:
To declare all plastic manufactured items as "CEPA Toxic" skips the step of identifying the path a product takes before reaching a point at which it might cause unacceptable risk of harm to the environment. The risk to the environment comes not from the item, but rather from the conditions under which it enters the environment (e.g., when, where, how, and how much), and how the environment is impacted by that exposure.

No Screening Assessment Completed:
Section 74 of the Act requires that a screening assessment be completed in order for the government to add a substance to Schedule 1 under Part 90 of the Act. CME's position is that the final science report of plastic pollution is not a screening assessment. Moreover, CME's view is that a screening assessment of plastic pollution does not fulfill the requirements of a screening assessment of all 'plastic manufactured items'. Therefore, there is insufficient basis for the broad category identified in the Proposed Order.

In order to satisfy the requirement for a screening assessment, the government's own precedent requires that a draft screening level risk assessment (DSLRA) be completed. CME's understanding is that the DSLRA has not been completed. Had it occurred, we believe that the conclusion would have been different and would not have led to such a broad designation of plastic manufactured items. Similarly, CME believes that had a proper risk assessment been conducted, there would be significant evidence suggesting that the risk to the environment is not from plastic manufactured items. The risk related to the physical properties of the designated items has not been considered in the Proposed Order. A DSLRA assessment would have led to a more fulsome review of scientific literature and Canadian exposure data. It would not have concluded that all plastic manufactured plastic items have the potential to cause ecological harm. The designation must be more precise to target individual concerns.

CME believes that a Board of Review is warranted as the Proposed Order to add plastic manufactured items to Schedule 1 is based on a process which is inconsistent with previous Chemicals Management Plan (CMP) risk screening assessments. The Proposed Order was not offered for public comment in a draft form where more narrow options, if applicable, could have been addressed as is established practice under the CMP. This is a change in direction from the previously established CMP process.

Strengthening Science in Decision-Making:
The government has stated that it is committed to sound science. As such, CME feels that the establishment of a scientific panel to review the work of the government is required. This is

consistent with the Prime Minister'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."

CME believes that manufacturers have a right to have the science underlying any Proposed Order tested by subject matter experts. A government that is committed to transparency, sound science and accountability should not have any objection to such a test. To state that all plastic manufactured items present the risks identified in the science report is not supported by the conclusions made in the document or the exposure scenarios upon which the document is predicated. Moreover, ECCC's *Economic Study of the Canadian Plastic Industry, Markets, and Waste (2019)* indicates that plastic leakage (pollution) into the environment from Canada is one per cent. While continuous improvements in manufacturer's behavior and business practices are warranted, a one per cent leakage into the environment does not justify the Proposed Order applying to all 'plastic manufactured items' nor is there evidence that the broad designation would address the behaviors causing the environmental leakage. A Board of Review would challenge the conclusions of the science report and act as a check to non-peer reviewed data upon which the exposure scenarios are based.

The government identified limitations in the science report. These limitations include "significant data gaps … that preclude the ability to conduct a quantitative risk assessment." In fact, the government called for an additional study to determine the scientific factors and consequent risks associated with plastic and plastics waste in the environment. CME strongly believes that this provides good reason for an independent Board of Review to ensure that the decisions being made on incomplete science are as robust as possible. An independent panel has no vested political interest in the outcome of their investigation. The admission by the government of these specific gaps in the literature calls for the very information which could be used by you to reconsider its proposed order.

Conclusion:

CEPA is the wrong act, and the wrong tool, being used to solve the wrong problem. Creating an impression that safe, sanitary plastic materials are toxic through the CEPA will ultimately make it more difficult for Canada to achieve the objective of reducing plastics waste in the environment and meeting its climate targets. We need a strategy that deals with reducing plastic waste specifically and effectively that builds on the work that the Canadian Council of Environment Ministers (CCME) has undertaken. The federal government action through CEPA is not required and interferes with provincial waste resource recovery plans and will be an impediment to establishing the Plastics Circular Economy.

CME would welcome the opportunity to provide you with the names of subject matter experts who could sit as panel members in the event you elect to introduce a Board of Review.