



**CANADIAN PAINT  
AND COATINGS  
ASSOCIATION**

**ASSOCIATION CANADIENNE  
DE L'INDUSTRIE DE LA PEINTURE  
ET DU REVÊTEMENT**

December 8, 2020

The Honourable Jonathan Wilkinson, P.C., M.P.  
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Dear Minister:

**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***

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CPCA raised serious concerns with the Proposed Order laid out in the attached, formal submission related to extenuating concerns that are not based on sound science as admitted by the Government's own Science Assessment of Plastic Waste and Pollution.

Please accept this Notice of Objection to the Proposed Order to add 'plastic manufactured items to Schedule 1 of CEPA.

Sincerely,

J. Gary LeRoux  
President & CEO



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Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance  
Honourable Navdeep Bains, Minister of Innovation, Science and Industry  
Honourable Mélanie Joly, Minister of Economic Development and Official Languages  
Honourable Patty Hajdu, Minister of Health  
Honourable François-Philippe Champagne, Minister of Foreign Affairs  
Honourable Seamus O'Regan, Minister of Natural Resources

***RE: Comments on the Government of Canada Proposed *Integrated Management Approach to Plastic Products to Prevent Waste and Pollution****

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The Canadian Paint and Coatings Association (CPCA) is pleased to be able to comment on the recent discussion paper titled “*A proposed integrated management approach to plastic products*” as part of the 60-day public consultation period ending December 9, 2020. **We believe the proposed action will have consequential and potentially negative impacts on several other Ministries noted herein and as such we wish to make them fully aware of the implications for their respective mandates from the actions now being proposed.**

Since 1913, CPCA has represented Canada’s major paint and coatings manufacturers as a not-for-profit association, including their industry suppliers and distributors in three primary product categories: architectural paints, industrial products, and automotive coatings. In Canada, CPCA members have more than 261 paint manufacturing establishments, own more than 3,000 retail stores, supply products to another 5,000 retail stores and more than 7,500 auto body shops. This represents annual economic impact of more than \$12.3 billion, employing directly and indirectly 86,300 employees.

## **Introduction**

Plastic is not a substance. Plastics is not “toxic.” Section 64 of CEPA confirms that most substances used to make plastics are not toxic. Yet the federal Government now wishes to designate all plastic manufactured items, mainly due to their plastic components, as toxic under Schedule 1 of the Canadian Environmental Protection Act (CEPA 1999) thereby adding “plastics as a whole” to the Toxic Substances List. This is being pursued despite grave concerns already expressed by CPCA and many other organizations with respect to the Government’s own *Science Assessment of Plastics Pollution* wherein it acknowledges the lack of scientific data to designate all forms of plastics as toxic.

If plastic, or more precisely the actual polymeric compounds used to make plastic, were indeed toxic they would not be used in artificial hearts or a person’s joints. Many implanted and other critical devices would be impossible without biologically safe and protective plastics for products like gloves, face masks, plastic barriers and many other critical uses made even more critical during the pandemic. For the most part ‘packaging plastics’ is recycled or recyclable and governments around the world have programs in place to do just that, including Canada. These Extended Producer Responsibility (EPR) programs exist in Canada under provincial jurisdiction with continued improvements for recovery and recycling of various wastes such as packaging, as well as municipal, household and special wastes. Established EPR programs is the preferred approach to prevent plastic waste and pollution. Improvements continue to evolve for those recycling programs, but adding plastic products to Schedule 1 of CEPA will add little to speed up current efforts to prevent or recover plastic waste, while demonizing plastics and causing significant international and national trade disruptions.

## **Chemicals Management Under CEPA**

The use of the term ‘toxic’ in Schedule 1 of CEPA is something that has long been the source of considerable confusion across industry supply chains. Industry has demanded a list of clear and explicit terms on the why, how, and where exposure to a specific substance or a family of substances is deemed to be “toxic,” and under which chemical applications, processes, etc. In some cases, the substance use levels can be reduced or alternatives can be introduced to continue manufacturing products in Canada. But even those assessments lead to risk management decisions that often affect product performance, and consequently negative impacts on competitiveness, corporate revenue and taxation, as well as Canadian jobs.

The federal Government’s focus should be on recovery and recycling and not on the chemical composition of plastics per se, or banning ‘manufactured items,’ which are ‘manufactured products’ containing one, two or more chemical components in the plastic. Those chemicals have already been prioritized in terms of potential harm to human health and the environment. These chemicals of most concern are extensively risk-assessed by the federal government under the Chemicals Management Plan (CMP). Working collaboratively with industry, CEPA already requires industry to provide comprehensive scientific data in support of detailed risk assessments using toxicological and specific use data to determine impacts on both human health and the environment. Some of those chemicals have been banned and others have been risk managed via

instruments such as a regulation, pollution prevention plans, compliance agreements, codes of practice, etc. All of that continues under the CMP per extensive CEPA requirements.

CPCA appreciates the Government's stated commitment to multiple rounds of stakeholder consultations and its openness to industry input for further 'scientific' data analysis. It is hoped that once those conclude it will further confirm what the *Science Assessment of Plastic Pollution* already admitted, that much more scientific data is required before moving forward in adding plastic manufactured products to Schedule 1 of CEPA. We are encouraged by the assurances that sound science, and ultimately evidence-based decision-making, will prevail and serve to shape the future of plastics management in Canada. Then, the federal Government can work to address the many uncertainties and substantial information gaps noted in the [Science Assessment of Plastic Pollution](#). Many now believe that the subsequent [Discussion Paper](#) is being used to circumvent the established risk assessment and risk management process under the Chemicals Management Plan. The CMP addresses assessment and management of chemical substances, with this recent Order the federal Government now wants a more sweeping, broad brush approach to 'manufactured products,' in the absence of scientific data. It is unclear how that can be done under CEPA or should be done.

The federal Government must continue following its own credible, peer-reviewed chemical assessment pathways to ensure scientific integrity in its quest to prevent plastic waste and pollution. As a member of the CEPA Industry Coordinating Group (CEPA-ICG), focused strictly on technical and scientific analysis, CPCA signed and fully supports ICG's list of technical concerns with the proposed integrated approach and the lack of scientific data related to that approach.

### **Application of the Precautionary Principle to Plastics Pollution**

The recent Order on the proposed integrated approach to prevent plastic waste and pollution, pointed to the relevance of macro- and micro-plastics in that endeavour. The recent science assessment recommended pursuing actions to reduce macroplastics and microplastics ending up in the environment in accordance with the Precautionary Principle, which states that, "*where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.*" However, it cannot be overlooked that this statement is only in the context of 'risk assessment' of 'chemical substances' used in manufacturing products, and nothing whatsoever to do with assessing or banning 'manufactured products' used for a particular purpose.

Building on the comments already submitted on the *Draft Science Assessment of Plastic Pollution*, CPCA would like to re-emphasize that the application of the Precautionary Principle is valid in a **risk assessment context only and only in the case of 'chemical substances,' not as currently envisioned for 'manufactured items and their various components' including plastics and products.** It can only be applied in situations wherein full scientific certainty is lacking for 'chemical substances' and where a 'high level of risk' has been **conclusively** identified by decision-makers for those particular 'substances' related to standards of environment, human health and safety. The current state of the science on the use of macroplastics and especially microplastics, resulting from subsequent microplastic degradation, does not warrant immediate

regulatory action other than waste management via existing or new programs. **If regulatory action such as a ban were pursued it would need to follow the risk assessment and risk management protocols as clearly outlined under CEPA.**

Government's reliance on the precautionary principle statement could be interpreted as a political push towards reduced use of plastics without consideration of the evidence-based approach that is critical for informed risk assessment and risk management of chemical 'substances.' The Canadian Government has followed this approach for decades. Therefore, it is highly questionable if and whether any chemical or product restrictions can ever be considered for a wide group of non-biodegradable plastic polymers or 'microplastics,' which includes a vast array of essential products. **Without specific scientific data on adverse effects of macroplastics related to morphology, physio-chemical properties and persistence in the environment, it is 'not' appropriate to use the precautionary principle to justify restrictions or bans.** That is a widely accepted standard for chemical assessment in Canada under the CMP.

One of the exemplary features of Canada's widely regarded Chemicals Management Plan, which has gained international plaudits in recent years, is its reliance on 'risk-based' decision making. Chemical assessment activities must directly target the underlying risks, where they are evident and proven, in order to assist in developing cost-effective risk management strategies and mitigation actions targeted specifically at those risks. Industry has never questioned the validity of that process, though it has often been difficult and onerous in terms of complying with mandatory data requirements under CEPA in support of scientifically based assessments.

### **Supporting the Development of a Circular Economy Around Certain Macroplastics**

CPCA and numerous other stakeholders support the Government's quest for a circular economy approach for plastics as outlined in the [Ocean Plastics Charter](#) and the [Strategy on Zero Plastic Waste](#). The application of circular economy principles and the concepts of "reduce, re-use and recycle," as they relate to certain priority microplastics, have received significant industry buy-in and present opportunities for environmental and economic benefits. However, with the recent [Order](#) adding "plastic manufactured items" to the list of "toxic" substances under Schedule 1 of CEPA, the federal Government has gone beyond the scope of CEPA and ignored its oft-stated reliance on evidenced-based decisions, which must be grounded in science in this instance. If this Order proceeds without that scientific rigour, it would not be considered a 'gold standard' regulatory approach by any measure.

The federal Government seems to have decided that CEPA is the appropriate vehicle for plastics management despite the fact that CEPA was introduced as legislation intended for risk assessment and risk management of specific chemical substances or family of substances - 'not' manufactured products. CEPA is not intended to assess consumer products and has never before been used in that way. Neither is it meant to assess products used in the workplace, which are assessed under the Best Placed Act for specific uses of those chemicals in commerce. The application of such broad CEPA definitions, in what is ostensibly a science-based policy regime, will lead to regrettable restrictions and bans with irreparable harm to Canadian manufacturing and increasing trade disruptions.

The Discussion Paper introduces a number of ambiguous terms such as “environmentally problematic” and “prevalent in the environment” when referring to single-use plastics. **What do these terms really mean?** Neither are particularly helpful in framing the issue at hand. It does not help in determining if risk management is warranted, or even the need to establish the appropriate risk management activity. With terms like these and the use of the vague and broad “plastic manufactured items” designation, Government seems to be setting the stage to broaden the scope of items that can be restricted under CEPA. CEPA is not intended as a product restricting Act, but a chemical assessment and risk management Act that ensures chemicals designated as safe, or “CEPA non-toxic,” can remain in commerce. It has nothing to do with a circular economy or recycling waste per se. As such, it would set an unfortunate precedent that will further constrict an already challenged manufacturing sector in Canada, both pre- and post-pandemic.

The paint and coatings industry understands the circular economy. Canada leads the world in post-consumer paint recycling with over 28 million kilograms of leftover paint collected in 2019, the equivalent volume of to paint 560,000 average sized homes. Canada has been a leader in the field of paint recovery and recycling with other countries following Canada’s lead, including the United States. The Post-Consumer paint program already recovers leftover consumer liquid and aerosol paint and strives to ensure they are adequately recycled or properly disposed of as may be needed in certain circumstances. Such an EPR approach is also used for plastic and many other products. This is the way in which plastic waste and prevention can best be pursued to recover valuable, renewable resources with more targeted resource recovery and productivity. **However, CEPA is not the best placed Act to achieve those goals and thus raises the question, why is CEPA now being used to do so? Is the intent to ban manufactured plastic and other manufactured products in Canada, holis-bolus, without scientific data?**

### **Scientific Uncertainty Around Microplastics**

The Discussion Paper is predominantly focused on the proliferation and environmental impact of macroplastics from discarded consumer products. Macroplastics are made of microplastics. However, microplastics are being given equivalent consideration in the rush to plastic waste prevention, despite the fact that the *Final Science Assessment on Pollution* acknowledged that, ***“the evidence is less clear and requires more research for potential effects of microplastics on individual animals and the environment” and that “there is also limited information about the potential human health effects of microplastics.”*** The issue of microplastics is significantly more complex in regard to the very definition of the materials and their origin, prevalence, and toxicity characteristics.

**It is critically important for the federal Government to establish clearer definitions of those materials and some acknowledgement of the current absence of standardized methods and analytical techniques to quantify microplastics in the environment and/or in animals and humans.**

The typical scientific definition for plastics is: *“Plastics are often defined by their size, with macroplastics being larger than 5 mm and microplastics being less than or equal to 5 mm.”* This creates an enormous scope for these materials, including all types of polymers and their dispersions used in many manufactured products, in multiple industry sectors including coatings, adhesives,

sealants and elastomers (CASE). It does not distinguish between synthetic, naturally occurring, or chemically modified natural polymers such as cellulose. Nor does it differentiate between water-soluble and water insoluble polymers. This highlights the difficulty in developing a suitable working definition and a subsequent, reasonable regulatory approach for all plastics.

**Without a more definitive and science-based approach, how can realistic evidence-based assessments be undertaken for plastic products or plastic waste pollution?**

The federal Government should NOT treat both macroplastics and microplastics with the same broad regulatory brush under the term ‘manufactured products.’ They are completely different with respect to chemical assessment. If the federal Government proceeds and adds ‘manufactured plastic items’ to Schedule 1 of CEPA the result would be negative impacts reverberating throughout the supply chain and Canada’s economy would suffer, pandemic or no pandemic. Macroplastics are essentially a waste management issue, while so little is known about microplastics. Micro-plastics assessment is still very new in terms of the available research with respect to chemical assessment and implications for downstream ‘manufactured products’ - of any kind. These challenges require a different set of policy and regulatory tools.

**Negative Trade Implications for Canada**

Many foreign trading partners view Canada's proposed ‘integrated approach’ as a non-tariff trade barrier if the "toxic" label is applied to macroplastics and/or “manufactured items.” Under such a scenario products imported from the United States containing plastic could be subject to import restrictions, potentially violating the United States-Mexico-Canada trade agreement. That agreement contains provisions related to regulatory cooperation for chemical substances in Sectoral Annex 12 and supports enhanced competitiveness to retain and grow jobs in all three countries for raw material producers, chemical distributors and manufacturers of chemical products.

This current proposal would harm a number of companies in all sectors such as automotive, medical devices, electronics and countless other industries depending on macroplastics and microplastics in particular. The "toxic" label could even restrict existing international recycling programs already in place to protect the environment, which encourage recycling of plastic and other waste products. In fact, there are obligations within CUSMA to address important matters such as marine litter and debris. The proposed ‘integrated approach’ has been taken without consulting Canada’s largest trading partner, and other countries, directly threatening trade in plastic items and by extension ‘products’ containing microplastics. These will cause unintended consequences across virtually every supply chain on which Canada depends for its prosperity.

The proposed action may also contravene long established practices under the WTO as a non-tariff trade barrier, per obligations under Article 2.9 of the WTO TBT Agreement, wherein Canada would appear to restrict trade more than is necessary under trade law without the transparency that provision requires. If that is indeed Canada’s intent with this current approach it must take further measures to ensure that such an approach is grounded on firm footing under the WTO rules, and well before pursuing regulatory actions. Decisions must be taken ‘on the basis of science.’ If not, it will be argued that no basis exists with respect to the Government of Canada’s intent to add

‘manufactured plastic items’ to Schedule 1 of CEPA or pursue restrictions or bans for other products by adding microplastics to Schedule I.

## **Recommendations**

CPCA appreciates the opportunity to comment on the proposed integrated approach to plastic pollution and we urge the federal Government consider the following recommendations before proceeding with the a broad brush approach on plastic waste prevention, in the absence of sound scientific data.

- Clearly distinguish legal toxicity for substances from the toxicity from complex objects resulting from their ubiquitous use, disposal and accumulation in the environment. If not, clarify that not “all macroplastic manufactured items” but just ‘specific designated plastic chemical types have the ‘potential’ to become toxic in the environment due to their uses in certain designated products because of their low recyclability and problematic recovery.
- In the case of substances that are not toxic, but can react and have the potential to become toxic in the environment, the Government of Canada has a specific process for assessing new activities and increased uses for existing substances (SNAcs) to restrict and control those uses, as may be required based on the science, not outright bans of those substances. Why choose a ban to target ‘manufactured items’ in which those plastic compounds are found, rather than focusing on reduction, recovery and reuse measures? Surely, that can be achieved by examining other regulatory and non-regulatory risk management instruments related to resource productivity and recovery.
- Formally recognize that not all macroplastic manufactured items are toxic, for example, those having an essential function such as providing fresh, nutritious food, and essential medical goods. The proposed Schedule I declaration implies that ALL macroplastics (composed of micropolastics/plastic microbeads, which are already added to Schedule 1) are toxic, while ALL manufactured items and/or their components are obviously NOT. Rather, the federal Government should adopt a circular economy approach wherein plastic waste materials subscribe to key principles related to use, re-use, recovery and recycling.
- CEPA must ‘not’ be used as a vehicle to target manufactured items or certain manufactured products as this is outside the scope of the legislation, which is designed specifically to assess individual chemical substances or a group of substances.
- Adopt a new law to manage plastic pollution rather than using CEPA or engage the existing regulatory approaches employed in every Provincial jurisdiction jointly developed and coordinated by the CCME as is currently envisioned under its plastics strategy. Plastic pollution is problematic as it overlaps several other federal Acts such as the FDA, PCPA (biofouling), CBSA, CCPSA, Fisheries and Oceans Act, HPA and international agreements (i.e. UMSCA).
- Various circular economy approaches developed under the CCME would allow other policy levers to be used such as taxing uses of certain plastics, institution of eco fees now



widely used in the Provinces. All of which have proven to be a positive regulatory approach to restrain mass consumption and waste, increase funding for R&D and encourage waste management technology transfer.

- Increase the knowledge on plastic waste and fully consider the economic and competitiveness aspects of plastic recycling and reuse as well as consider the new recycling measures or processes for PP, PE, PET wastes, and thus reinvigorate the research for reusing and recycling plastic items.
- Develop a more definitive lifecycle assessment and detailed risk management with an informed substitution approach for each of the six manufactured items now targeted for a ban and adapt the requirements/timelines accordingly, following detailed consultations with each industry group directly impacted.
- Focus the current analysis on how to improve the quality/performance of recycled plastics before imposing any recycling content in final products and ensure the availability of suitable alternative solutions for those products, in order to ensure the integrity and safety of consumer items or products is preserved.
- The federal Government must continue its reliance on science-based decision making and not rush the development and implementation of harsh risk management actions for chemical substances; and, certainly not before a more thorough assessment and evaluation of underlying risks is completed. Cost-effective and safer ways must be identified to manage actual risks **before** risk management actions are applied. That is the proper protocol for Canada's 'gold standard' risk assessment and risk management approach, adopted by other countries for its reliance on evidenced-based decision-making.
- The federal Government must support further research activities directed at a more standardized and narrower definition of microplastics/microbeads, validated through reliable quantitative analytical methods for their characterization, and acknowledge the different roles of primary versus secondary releases of microplastics to the environment, all of which must be grounded in sound science.
- Macroplastics must not be risk assessed and managed under the same expanded approach as currently envisioned for microplastics/microbeads.

## **Conclusion**

CPCA fully supports the Government of Canada's chemicals management approach for substances under the Chemicals Management Plan. However, our members are very concerned that sound science and credible processes are being overridden with the current proposal to add 'manufactured items' to Schedule 1 of CEPA **without** the comprehensive industry consultation and scientific evidence to support such actions.

We urge the government to undertake a broader and more robust industry consultation to build upon the concerns and questions raised by a wide spectrum of industry sectors in Canada and

across multiple supply chains. Ultimately the current process must be modified including the terms, definitions, and frameworks used in the plastics management strategy. Canada needs to adhere to a more holistic view of the plastic waste problem and not hastily adopt drastic risk management measures, which will not be aligned with those of many other countries, both developed and developing.

We are hopeful that CPCA's views, those of the CEPA Industry Coordinating Group and other impacted industry groups, will be taken into full consideration in shaping government's activities on plastic waste and pollution. More importantly, we encourage the Government to do so in a way that is consistent with Canada's longstanding history of risk-based decision making in chemical assessment, which is arguably considered the 'gold standard' for chemical regulations.

Regards,



Gary LeRoux  
President & CEO

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