



December 3, 2020

The Honourable 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

Sent by email: eccc.substances.eccc@canada.ca

RE: 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: Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999*

I am writing to you on behalf of Dow Chemical Canada ULC ("Dow Canada"). This submission responds to the October 10th, 2020 Gazette Notice ("Notice") in which the Governor in Council, on the recommendation of the Minister of the Environment ("Minister"), proposed an Order to add "Plastic Manufactured Items" to Schedule 1 of the *Canadian Environmental Protection Act, 1999* ("CEPA") (hereafter referred to as "Proposed Order"). Dow Canada would like to formally object to the Proposed Order, and request that you establish a board of review under section 333 of the *Canadian Environmental Protection Act* (the Act) to review the recommendation.

For your consideration, we have provided a compendium of materials which we believe provide additional scientific evidence that the Minister could consider improving the findings of the science assessment of plastic pollution. These materials have been published since the completion of the comment period for the original draft Science Assessment of Plastic Pollution (SAPP) released in January 2020.

Had the SAPP been completed with a more fulsome review of the cannon of scientific literature and its application to specific instances of pollution, a different outcome would have been reached. We would ask the Ministers to invoke their discretion and empanel a Board of Review to consider the additional materials provided here.

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No Screening Assessment Completed:

Section 74 of the Act requires that a ‘screening assessment’ be completed in order for the Minister “to determine whether the substance is toxic or capable of becoming toxic,” and thus whether such substance(s) should subsequently be added to Schedule 1 under Part 90 of the Act. We do not believe that the Science Assessment of Plastic Pollution submitted in October 2020 in support of the Proposed Order qualifies as a ‘screening assessment’ required by section 74. Rather than providing the required scientific assessment, the SAPP is simply a literature review. Moreover, it is a literature review that admits that there are uncertainties in the available science that should be rectified. A Board of Review can help to crystalize those key questions and provide guidance to those who are required to make science-based decisions.

There is significant evidence indicating that the risk to the environment from ‘plastic pollution’ is not from a broad class of plastic manufactured items. The identified risk from ‘plastic pollution’ is not related to the physical/chemical properties of the designated items contemplated by the Proposed Order. In other words, this broad designation is not rationally connected to the review undertaken by the government. A Board of Review can assist the Minister in making a more concrete connection between the identified risk and the regulatory instrument which is proposed to manage the risk.

Process Ignored Precedent:

Dow Canada 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”) screening assessments.

Under the CMP, in order to satisfy the requirement for a screening assessment, a draft screening level risk assessment (DSLRA) and final screening level risk assessment (FSLAR) have been traditionally the vehicles through which the requirements of section 74 have been met. Had a DSLRA and FSLAR been completed, it is our opinion that the conclusion could not have led to a proposal that plastic manufactured items qualified as CEPA Toxic. A true screening assessment would have established what exposures of concern would contribute to an unacceptable risk. The SAPP does not perform this critical analysis.

It is also worth noting that the Proposed Order was not offered for public comment in a draft form, as has typically been done in past practice. Had this precedent been followed, stakeholders could have been canvassed, as is established practice under the CMP, to offer narrower and more precise language for the Proposed Order. This is a significant deviation from the previously established CMP process.

Plastic Manufactured Items are not in and of themselves toxic:

The Science Assessment of Plastic Pollution correctly identifies that the potential hazard associated with the presence of plastic in the environment is from plastic pollution, i.e., plastic wastes, and not from the substances themselves. Dow Canada is strongly in favour

of preventing plastic waste from entering the environment and has taken multiple steps at a local and international level to protect against plastic waste entering the environment. The Proposed Order is not as specific. The Proposed Order applies to every single piece of plastic in Canada, without exception, irrespective of the likelihood of the risk of the plastic entering the natural environment as waste. It would apply equally to plastic that is disposed of properly (or reused or recycled) as it would to single use plastic which is discarded carelessly – if all plastic carries the same environmental risk. This is clearly not the case.

There are at least two intervening steps that must occur before a plastic manufactured item can become plastic pollution and subsequently create a risk to the environment. First, the plastic manufactured item must be used by a consumer or industry. Second, the plastic manufactured item must be improperly disposed of by that consumer or industry. A potential third intervening act – poor municipal waste management practices – could also contribute to increasing the potential environmental risk.

The past practice of the Chemicals Management Plan is that materials are not found to be toxic when the exposures of concern do not emanate from an intended use of the substance in question. In the issue at bar, the identified risk does not come from the plastic item itself. Rather, it emanated from how the plastic is disposed of AFTER its intended use.

Simply put, not all plastic manufactured items have the potential to cause the ecological hazard identified in the SAPP. There is nothing inherent to plastic manufactured items that “may cause adverse effects to aquatic organisms in certain Canadian environments.” Nor do all plastic manufactured items “have the potential to cause ecological harm.” We believe that the designation must be narrowed to target the individual items or specific substances which may be of concern, where that concern is appropriately supported by science.

There is nothing in the SAPP that would justify such a broad categorization. It is our view that the only thing that justifies such a broad listing is the future risk management plans of the government relating to recycled content and extended producer responsibility, neither of which would contribute to reducing the risk identified in the SAPP, as any item manufactured with recycled plastic can still become fugitive plastic if it is improperly disposed of.

For the government to declare a plastic manufactured item as “CEPA Toxic” when multiple subsequent intervening acts contribute to the alleged adverse outcome ignores the true cause(s) of the unacceptable risk. The risk to the environment comes not from the item, but the behaviour of consumers, waste management groups and municipalities. Virtually all manufactured items – irrespective of their composition – could meet the test for CEPA Toxic unless (or until) they break down completely in the environment. Paper, wood, steel, aluminum and other materials that would replace the plastic in disposable

single use items would likely cause the same adverse outcomes because of their form. The resulting 'regrettable substitutions' may also have antecedent environmental effects – like increased GHG emissions - which are not fully canvassed in the SAPP. A Board of Review could consider a life cycle comparison of the environmental effects of these manufactured items. Substituting one environmental problem for another in the name of science is not sound policy or sound science.

Government Commitment to Sound Science:

The Government has made numerous commitments to sound science. We believe that establishing a scientific panel to review the work of the government is consistent with the Prime Minister's instructions in the Minister's mandate letter. The mandate letter notes that the Minister will ensure that "the Government of Canada is committed to strengthen science in government decision-making and to support scientists' vital work."

A government that is committed to transparency and scientific rigour should not have any objection to such a review. To categorically state that all plastic manufactured items present the risks identified in the SAPP is incorrect. We do not believe that the conclusions made in the science document or the exposure scenarios upon which the document is predicated are appropriate. A Board of Review could challenge the conclusions and act as a check to non-peer reviewed data (citizen science) upon which the exposure scenarios are based.

We would be pleased to provide you with the names of experts who could sit as panel members in the event that you elect to empanel a Board of Review.

Sincerely,

Dow Chemical Canada ULC

A handwritten signature in black ink, appearing to read 'Tyler Edgington', written in a cursive style.

Tyler Edgington, President

CC: Thomas Kruidenier
Dany Drouin