HUSKY
Keeping our customers in the lead

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December 8, 2020

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

Dear Minister Wilkinson:

RE: Notice of Objection and Request for Board of Review in relation to the proposed Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999 in relation to "plastic manufactured" items, as published in the *Canada Gazette*, Part I, Volume 154, Number 41 on October 10, 2020.

NOTICE OF OBJECTION AND REQUEST FOR BOARD OF REVIEW

This letter responds to the October 10, 2020 Gazette Notice ("Notice") in which the Governor in Council, on the recommendation of the Minister of the Environment and the Minister of Health, and pursuant to subsection 90(1) of the Canadian Environmental Protection Act, 1999 ("CEPA"), proposed an Order to add "plastic manufactured items" to Schedule 1 of the CEPA (the "Proposed Order").

By this letter and in accordance with section 333 of the CEPA, Husky Injection Molding Systems Ltd. ("Husky") files this Notice of Objection in respect of the Proposed Order and requests the Minister establish a Board of Review to inquire into the nature and extent of the danger posed by "plastic manufactured items".

Husky's reasons for this objection are the following:

1. **The Science Assessment is an inadequate basis for making a determination regarding the toxicity of "plastic manufactured items**";
2. **Existing scientific evidence does not support a determination that "plastic manufactured items" are toxic; and**
3. **A Board of Review will provide legitimacy to the Federal Government's science-based decision-making.**

Husky has been actively engaged in the process leading up to publication of the Notice. To further support this Notice of Objection, we enclose a copy of our detailed feedback regarding the Proposed Order and Environment and Climate Change Canada's ("ECCC") "Proposed integrated management approach to plastic products to prevent waste and pollution for plastics management – Discussion Paper" ("Discussion Paper"), as provided under separate cover to relevant ECCC representatives, is also enclosed.

INTRODUCTION

Husky Injection Molding Systems Ltd. is a leading supplier of injection molding equipment and services to the plastics industry. We design, manufacture and integrate the industry's most comprehensive range of injection molding equipment, including machines, molds, hot runners, auxiliaries and integrated systems.

Our value-added services include preform development, factory planning, customer training, systems integration and complete asset management.

Husky employs over 1,200 team members at our headquarters in Bolton, Ontario.

With one of the broadest product lines in the industry, our equipment is used to produce a wide range of products for the beverage packaging, closures, thin wall packaging, medical, and consumer electronics markets. Husky employs approximately 4,200 people worldwide, including approximately 600 service representatives across 40 service and sales offices globally. Husky supports customers in over 140 countries, and our main manufacturing facilities are located in Canada, United States, Luxembourg, Switzerland, China, India and Czech Republic.

The Canadian plastic industry is a significant economic sector – a $28 billion sector that directly employs over 93,000 Canadians and which indirectly employs over 279,000 (ECCC – Economic Study of the Canadian Plastics Industry, Markets & Waste - 2019). One third of employment in the entire plastic value chain (beyond construction, transportation, medical, textiles, agriculture, white goods and other plastics) is in plastic packaging.

REASONS FOR OBJECTION

1. The Science Assessment provides an inadequate scientific basis for determining the toxicity of "plastic manufactured items"

According to the Regulatory Impact Analysis Statement that accompanies the Proposed Order, the Science Assessment "provided the ministers with the evidence to recommend adding “plastic manufactured items” to Schedule 1 to CEPA."[1]

With respect, the Science Assessment simply does not provide the rigorous, science-based analysis that is expected to underlie the exercise of federal powers under the CEPA.

ECCC describes the expected process under section 90(1) of the *CEPA* as follows:

> A substance is "CEPA-toxic equivalent" if it satisfies the definition of "CEPA-toxic" as a result of a systematic, risk-based assessment. Such assessments can include determinations made under other federal statutes, or can incorporate appropriate elements of assessments done by or for provinces or territories, international organizations or other appropriate scientific authorities such as [the] Stockholm Convention [and the] Montreal Protocol.[2]

The Science Assessment is clear that its scope would not satisfy the systematic, risk-based assessment described above to support a determination of toxicity. The Science Assessment states that it is not intended as a substitute for chemical risk assessment,[3] but also notes that "typically, a chemical risk assessment is conducted to assess the potential for risk to the environment and human health associated with a substance." The Science Assessment itself specifically states that it is highly deficient in this regard:

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[1] Regulatory Impact Analysis Statement at "Instrument Choice", as published in the Canada Gazette, Part I, Volume 154, Number 41: Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999 (October 10, 2020) online: < http://gazette.gc.ca/rp-pr/p1/2020/2020-10-10/html/reg1-eng.html> ("Regulatory Impact Analysis Statement").

[2] ECCC, "Risk assessments under section 90(1) of Canadian Environmental Protection Act, 1999" (date modified: 2019-05-23) online: <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/substances-list/risk-assessments-section-90-1.html>.

[3] Science Assessment at section 1.1, page 14.

> However, significant data gaps currently exist that preclude the ability to conduct a quantitative risk assessment, including a lack of standardized methods for monitoring microplastics and characterizing the environmental and human health effects of plastic pollution, as well as inconsistencies in the reporting of occurrence and effects data in the scientific literature (Gouin et al. 2019).
>
> [emphasis added]

The process undertaken to complete the Science Assessment, which can best be described as a literature review, is also outside the CEPA's rigorous, science-based pathways established to assess potentially toxic substances. It is not a screening assessment (section 74), a review of a decision of another jurisdiction (section 75), nor is it the assessment of a substance on the Priority Substance List (section 76). Inexplicably, scientific rigor under the CEPA has been displaced by expediency without any consideration of the potential for negative impacts to the health and safety of Canadians and to the plastic manufacturing and related industries in Canada. The serious implications associated with designating and stigmatizing "plastic manufactured items" in Canada as a "toxic substance" demands actual science specific to Canada that could reasonably support such a designation. The Science Assessment does not meet that threshold.

Further, while the Regulatory Impact Analysis Statement and the Science Assessment both suggest that the Science Assessment takes a similar approach as taken in the Science Summary on Microbeads ("Microbeads Summary"),[4] this characterization is simply incorrect. The Microbeads Summary involved a review of relevant science, but also explicitly considered whether microbeads met the definition of a "toxic substance" at section 64 of CEPA and reached a conclusion on the substance's toxicity based on the science reviewed in that summary.[5] The Science Assessment completes no such assessment on which the Ministers may rely when making their recommendation.

Instead of making a determination regarding the toxicity of microplastics and macroplastics, the Science Assessment is clear only on its recommendation "that research be conducted to address key knowledge gaps identified in this report," including studies to improve the understanding of both exposure to and potential toxicity of plastics."[6]

Based on the obvious gaps identified by the Science Assessment, it is clear that additional review is required to determine the nature and extent of the danger posed by plastic manufactured items in Canada. A Board of Review would be best positioned to address these gaps and inform a science-based decision by the Federal Government as to the toxicity, if any, of "plastic manufactured items".

2. Based on current science, plastic manufactured items are not CEPA-toxic

Under the CEPA, a substance is "toxic" where it meets the criteria provided at section 64, which states that a substance is toxic if it is entering or may enter the environment in a quantity or concentration or under conditions that (a) have or may have an immediate or long-term harmful effect on the environment or its biological diversity; (b) constitute or may constitute a danger to the environment on which life depends; or (c) constitute or may constitute a danger in Canada to human life or health.

[4] Science Assessment at section 1.1; Regulatory Impact Analysis Statement at "Science assessment of plastic pollution" and footnote 3.
[5] See https://www.canada.ca/en/health-canada/services/chemical-substances/other-chemical-substances-interest/microbeads.html.
[6] Science Assessment at page 82.

The Science Assessment does not assess its findings against these criteria. As a result, no determination of whether microplastics and macroplastics (and, by extension, "plastic manufactured items") are in fact "toxic substances" under the CEPA is made by the Science Assessment.

Further, a reasonable review of the studies contained in the Science Assessment fails to demonstrate that microplastics or macroplastics meet the definition of CEPA-toxic. The Science Assessment found that:

- For microplastics, "evidence for potential effects of microplastic pollution on environmental receptors is less clear and sometimes contradictory, and further research is required";[7] and
- Neither microplastics nor macroplastics potentially constitute a danger in Canada to human life or health.[8]

Macroplastics were found to cause physical harm to environmental receptors on an individual level and to have the potential to adversely affect habitat integrity.[9] However, the Science Assessment did not determine that harm to individual receptors constituted an "immediate or long-term harmful effect on the environment or its biological diversity" required to engage section 64(a), or find that these studies caused the "danger to the environment on which life depends" that is necessary to engage section 64(b).

Even if these harms were judged sufficient to warrant a finding of harm under subsections 64(a) or (b), the vital link between harm and exposure (i.e., "the quantity, concentration or conditions under which the substance is entering, or may enter, the environment") is not made out. The Science Assessment explicitly acknowledges that for macroplastics, given "the absence of standardized methods and techniques", "it is not possible to quantitatively characterize environmental or human exposure levels at this time".

In the absence of such a finding of toxicity to underpin the Proposed Order, Husky submits that a Board of Review would provide the necessary scientific review to determine whether "plastic manufactured items" are in fact toxic substances and can be added to Schedule 1 of the CEPA.

3. A Board of Review will provide legitimacy to the Federal Government's science-based decision-making.

Husky is asking that a non-partisan scientific Board of Review be established to address the gaps in the Science Assessment and to properly inquire into the nature and extent of the danger posed by "plastic manufactured items".

We believe that a Board of Review would provide an opportunity for the rigorous scientific risk assessment contemplated by the CEPA to actually take place. Husky is confident that a Board of Review would determine that "plastic manufactured items" are indeed <u>not</u> toxic in both the ordinary sense and in accordance with the criteria provided at section 64 of the CEPA.

Particularly where the Federal Government has admitted to significant scientific gaps in Science Assessment that preclude the ability to conduct a quantitative risk assessment, Husky suggests that an independent Board of Review would be the appropriate body to fill these gaps. This is particularly important given the negative implications of designating "plastic manufactured items" as toxic in Canada, which is extreme and unnecessary by any measure. Canada needs to seriously consider how such a designation could impact the future of Canada's plastics industry.

Currently Canada has a robust world leading plastics industry that not only contributes significantly to the Canadian economy, but also provides critical supply chain capabilities where the need for such capabilities

[7] Science Assessment at page 82.
[8] Science Assessment at sections 7.1 and 10.
[9] Science Assessment at pages 10 and 82.

has never been more apparent. Canada's plastic industries understands and supports that more can be done to address plastic pollution, plastic waste and recycling and is a willing partner in addressing these issues. However, designating a broad class of plastic manufactured items as toxic is not appropriate and should be rejected unless there is clear science supporting a conclusion of true toxicity under the CEPA.

Conclusion

Husky respectfully submits that Schedule 1 of the CEPA was designed to safely manage substances that are of urgent, acute, or long-term concern to human health (e.g., asbestos). Lumping a broad class of materials like "plastic manufactured items" together and then labeling that category as a toxic substance – particularly where impacts arise from improper end of use management, not from the substance's actual toxicity – is inappropriate and will lead to many unintended consequences. As noted in Husky's comments on both the Proposed Order and the Discussion Paper, we believe the federal and provincial governments, the plastics industry and other stakeholders should instead be focused on working collaboratively to achieve the following outcomes:

- **Harmonized Extended Producer Responsibility:** to eliminate confusion around what gets recycled; increase collection rates; grow end-markets for recycled content; and reduce costs.

- **Expanded Infrastructure** to recover value from ALL used plastics, including investments in: advanced collection and sorting systems; advanced plastics recycling and recovery initiatives including mechanical and chemical recycling, and; removal of regulatory barriers.

- **Support for innovation**: ensure that ALL plastics products are designed for durability, reuse and recyclability, and; support new and emerging chemical recycling innovation. Canada needs to keep plastics in our economy but out of our environment.

- **A life cycle approach**: We need to look at the entire life cycle of a product. If the replacement to the plastic product is worse for the environment in the long-term, this does not provide a viable solution.

- **Working with Provinces and CCME Zero Plastic Waste Strategy:** We support the important work of the CCME as it uses science and data to avoid the negative unintended environmental, economic and social consequences of bans. Canada is recognized for its advanced waste management and recovery systems (e.g. United Nations recognized Ontario Blue Box) to manage plastic and other waste resources. A solution exists that is supported by all levels of governments, industry and stakeholders - the Canadian Council of Ministers of Environment Zero Plastic Waste Strategy. This strategy was developed collaboratively with all levels of government, industry and other stakeholders to eliminate plastic waste.

The above strategy is being implemented by the provinces through comprehensive waste management legislation and policies which can be enhanced through collaboration. Industry partners are active through extended producer responsibility and design changes to their products to support reduction, reuse, recycling and recovery of plastic resources.

All of the laudable goals listed above can be achieved without taking the extreme step of designating and stigmatizing plastic "manufactured items" as a toxic substance. Creating an impression that safe, sanitary plastic materials are toxic through the CEPA will ultimately make it more difficult for Canada to achieve its ZERO WASTE objectives. We need a strategy that deals with plastic waste specifically and effectively. The federal government action through the CEPA is not required, not the appropriate legislative

mechanism, interferes with provincial waste resource recovery plans and will be an impediment to establishing a circular economy for plastics.

Sincerely,

HUSKY INJECTION MOLDING SYSTEMS LTD.

Joachim Niewels
Vice President, Innovation and Sustainability

Att. Comments on the Proposed Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999 and the Proposed Integrated Management Approach to Plastic Products to Prevent Waste and Pollution Discussion Paper