



S.R. (Stuart) Lunn
Vice President,
Policy and Advocacy
587.476.4482 Tel
stuart.r.lunn@esso.ca

February 22, 2022

Hon. Steven Guilbeault, P.C., M.P.
Minister, Environment and Climate Change Canada
c/o Tracey Spack, Director, Plastic Regulatory Affairs Division,
Department of the Environment,
351 Saint-Joseph Boulevard,
Gatineau, Quebec K1A 0H3

Via email: ec.plastiques-plastics.ec@ec.gc.ca

Re: **Notice of Objection and Request for Board of Review for the Proposed Single-use Plastics Prohibition Regulations under the Canadian Environmental Protection Act, 1999; Canada Gazette Part I, Vol. 155, No. 52 – December 25, 2021**

Imperial respectfully submits this letter as an official Notice of Objection to the December 25, 2021 Canada Gazette I publication where Notice is given, pursuant to subsection 332(1) of the Canadian Environmental Protection Act, 1999, ("CEPA" or the "Act") that the Governor in Council, pursuant to subsection 93(1) of the Act, proposes to make Single-use Plastics Prohibition Regulations ("proposed Regulations").

With over 140 years of history, Imperial is an industry leader in applying technology and innovation to responsibly develop Canada's energy resources. Imperial is an integrated energy company that explores for, produces, refines and markets products across the full value chain that are essential to society. In our upstream business, we are contributing to reliable, affordable supplies of oil and natural gas for Canadians. We are also Canada's largest refiner of petroleum products, with refineries located in Alberta and Southern Ontario. We refine raw hydrocarbons into petroleum products essential to consumers and businesses, including gasoline, diesel, and chemicals used to make plastics.

As provided for by section 332(2) of CEPA, Imperial submits this Notice of Objection and respectfully requests a board of review be established to consider the nature and extent of the danger posed by the substances identified in the proposed Regulations, for the reasons set out below.

The Order adding plastic manufactured items to CEPA Schedule 1

The Regulatory Impact Analysis Statement of the proposed Regulations cites the Order adding plastic manufactured items to Schedule 1 to CEPA published in the Canada Gazette, Part II, on May 12, 2021 (the "CEPA Schedule 1 Order") as enabling the Ministers to propose the risk management measures within the proposed Regulations. As such, Imperial submits that the reasons outlined in the objections to the CEPA Schedule 1 Order also apply to the proposed Regulations.

Plastic manufactured items are not a “substance” under CEPA

A “substance” under CEPA subsection 3(1) is defined, in part, as “any manufactured item” (singular) “that is formed into a specific physical shape or design during manufacture and has, for its final use, a function or functions dependent in whole or in part on its shape or design”.

The items encompassed by the descriptor ‘plastic manufactured items’ are not a single type of item with a single type of functional end use related to their shape or design (e.g. all straws made of a specific material). The endless range of sizes, shapes, functions, and designs of items encompassed by the words plastic manufactured items were not and could not all be assessed against the toxicity criteria in CEPA Section 64 as a single “substance”.

To align with the definition of “substance”, the items within the scope of the proposed Regulations (and the broader plastic manufactured items listing on CEPA Schedule 1) would need to have been assessed for the risk in connection to each of their final function or functions that are dependent in whole or in part on its shape or design. The proposed Regulations do not align with the CEPA Part 5 intent and practice of assessing and managing risks from “substances”.

Decision to regulate was not reached through Risk Assessment

As per Section 90(1) of CEPA, the Governor in Council must be “satisfied that a substance is toxic” before they may “make an order adding the substance to the List of Toxic Substances in Schedule 1”.

CEPA’s Guiding Principles “emphasize the integral role of science” in decision-making and that risk assessment is the “prelude to, and informs, the risk management stage for all programs” under CEPA¹. Authorities under CEPA Section 90(1) require that a substance satisfies the definition of “CEPA-toxic” as a result of systemic, risk-based assessment².

No risk assessment was undertaken for plastic manufactured items. Section 1.1 (Scope) of the Science Assessment of Plastic Pollution³, states that “It is not intended as a substitute for chemical risk assessment”.

No conclusion has been put forth with respect to the toxicity of plastic manufactured items in accordance with CEPA Section 64.

As a result, Imperial does not believe the conditions for the Governor in Council to order the addition of plastic manufactured items to CEPA Schedule 1 were met and by extension, neither have the conditions for the Governor in Council to propose the Single-use Plastics Prohibition Regulations.

Manufactured items and pollution are not interchangeable phrases

As stated above, the CEPA Schedule 1 Order for plastic manufactured items covers an endless range of items which were not (and could not) all be assessed against the toxicity criteria in CEPA Section 64. The documentation compiled and presented in the lead up to the CEPA Schedule 1 Order was for a combination of plastic waste and plastic pollution. No evidence for plastic

¹ [A Guide to Understanding the Canadian Environmental Protection Act, 1999 \(December 10, 2004\)](#)

² <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/substances-list/risk-assessments-section-90-1.html>

³ <https://www.canada.ca/content/dam/eccc/documents/pdf/pded/plastic-pollution/Science-assessment-plastic-pollution.pdf>

manufactured items was included. A clear exposure pathway remains to be established from a "substance" with uses and exposures in Canada through to real or potential human or environmental harm. There is no analysis in the literature review regarding how, when, and under what conditions plastic manufactured items (including the six categories of single-use plastics in the proposed Regulations) enter and become part of the plastic waste stream, and from there, how they enter the environment and pose a risk of harm.

The inability to draw meaningful conclusions regarding toxicity will not be resolved solely through research. A clear and reasonable scope must be placed on what substance is under consideration; the substance identified must meet the definition of "substance" under CEPA; and the data and analysis conducted in support of a CEPA Schedule 1 listing must pertain solely to the substance being assessed. The conclusions drawn, and the exposure scenarios upon which the proposal is made, are inappropriate. To categorically state that all plastic manufactured items present the risks identified in the Science Assessment of Plastic Pollution is incorrect.

Conclusion

Imperial and Canada's broader petroleum and chemicals industries have been full partners with the Government of Canada in the development and implementation of CEPA. Close cooperation between our industries and the Government of Canada resulted in the successful development and implementation of the federal Chemicals Management Plan.

Imperial supports the CEPA objective of managing risks posed by substances to Canadians and the environment based on sound science. For the reasons outlined in this submission, Imperial believes that establishing a board of review for the proposed Regulations is required.

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart R. Lunn", written in a cursive style.

Stuart R. Lunn
Vice President,
Policy and Advocacy
Imperial Oil Limited