



December 9, 2020

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

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

Via 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 of the Canadian Environmental Protection Act, 1999; Canada Gazette Part I, Vol. 154, No. 41 – October 10, 2020**

Imperial respectfully submits this letter as an official Notice of Objection to the October 10, 2020 Gazette Notice ("Notice") in which the Governor in Council, on the joint recommendation of the Minister of the Environment and the Minister of Health ("Ministers"), proposed an Order ("Proposed Order") to add "Plastic Manufactured Items" to Schedule 1 of the *Canadian Environmental Protection Act, 1999*, ("CEPA" or the "Act").

As we mark our 140 year anniversary, Imperial continues to be 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 that the Ministers establish a board of review, pursuant to section 333 of CEPA, to further consider the Proposed Order, for the reasons set out below.

Plastic Manufactured Items are not a "substance" under CEPA

The term 'plastic manufactured items' does not meet the definition of a "substance" as set out in subsection 3(1) of CEPA 1999. The proposed addition of 'plastic manufactured items' to CEPA Schedule 1 is not specific enough to meet the definition of "substance" under the Act. A "substance" under CEPA 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 breadth of the proposed listing does not align with the CEPA Part 5 intent and practice of assessing and managing risks from "substances". To align with the definition of "substance", a listing would need to be specific to a type of plastic item with its final function or functions

described in the listing. The proposed listing of 'plastic manufactured items' does not meet the required level of specificity.

Decision 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'. The Science Assessment of Plastic Pollution, Section 1.1 Scope, 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 be able to order an addition to CEPA Schedule 1 have been met.

Plastic Manufactured Items cannot be meaningfully assessed

By creating a proposed listing of 'plastic manufactured items' that, as worded, includes an endless range of items, the Proposed Order does not identify a "substance" with sufficient precision to enable an assessment for toxicity under CEPA. The documentation compiled and presented in support of this extremely broad and generic listing is for a combination of plastic waste and plastic pollution. No evidence for plastic manufactured items has been included. A clear exposure pathway remains to be established from a "substance" with use 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" 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.

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

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>

implementation of the federal Chemicals Management Plan. Imperial supports the CEPA objective of managing risks posed by chemicals 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 Order is required. This action is consistent with the Prime Minister's instructions in the Minister's mandate letter to ensure that the "Government of Canada is committed to strengthen science in government decision-making and to support scientists' vital work."

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart R. Lunn", with a long horizontal flourish extending to the right.

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