LAYFIELD
FLEXIBLE FILMS

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RE: Response to the Government of Canada's proposed order adding "plastic manufactured items" to Schedule 1, the List of Toxic Substances, under the *Canadian Environmental Protection Act* (CEPA) published on October 10, 2020 in Canada Gazette, Part I, Volume 154, Number 41.

The Layfield Group is a diversified group of companies involved in manufacturing, fabrication, and distribution of plastic products. The company produces a variety of flexible plastic packaging films, construction sheeting and geomembrane products in its Canadian facilities located in Richmond, BC, Edmonton, AB and Vaughan, ON.

Layfield is a private, family owned business in operation since 1978, headquartered in Richmond, BC with locations across Canada employing 350 people; as well as operations in the US and Australia employing an additional 100 people.

Layfield differentiates itself with the diversity and uniqueness of its product line and its capabilities, and the ability to specify and supply cost-effective solutions and products for a customer's particular need or application. The ability to manufacture, fabricate and install, as well as incorporate a range of third-party materials, allow the company to supply a bundled package of related, technically complex products.

Flexible Films focuses on manufacturing and processing a variety of flexible packaging products, construction film and geomembrane made from a variety of substrates; processes include mono and multi-layer extrusion, laminating, printing and converting.

Layfield has a long history in environmental protection. Dating back to the 1980's Layfield has designed and manufactured plastics based engineered solutions designed to protect the environment from hazardous materials. Layfield is committed to allocating resources to tackle the 'end of life' issue with Plastics. We protect our environment through sustainable innovation and sustainable operations.

SUSTAINABLE INNOVATION:

> Working together with brand owners and industry experts, Layfield has focused its sustainability efforts on 3 major initiatives – Products designed for discard (landfill), Products designed for recycling, and Products made from Recycled materials.

Layfield Group was awarded 2019's Green Business of the Year by the Richmond Chamber of Commerce for our eco-friendly Bioflex™ sustainable film. Bioflex™ will safetly return to the environment where it typically ends its life within the traditional waste streams. The energy from this packaging will be harnessed and converted into clean, renewable, sustainable energy within today's modern landfill environments. Our 4Flex technology offers manufacturers a laminated polyethylene solution that consumers can recycle with ease, simply recycle where #4 plastic is accepted. Our Enviroliner 3000 geomembrane polyethylene sheet is made from 100% recycled resin

Layfield Canada Ltd.is also a member of the is also a member of the Chemistry Industry Association of Canada's (CIAC) Plastics Division, which represents Canada's leaders in plastics industry sustainability – a $28 billion sector that directly employs over 93,000 Canadians.

Layfield Canada Ltd. appreciates the opportunity to respond to the Government of Canada's proposed order adding "plastic manufactured items" to Schedule 1, the List of Toxic Substances, under the *Canadian Environmental Protection Act* (CEPA) published on October 10, 2020 in Canada Gazette, Part I, Volume 154, Number 41.

The final science assessment of plastic pollution does not fulfill the requirement for a screening assessment, and/or a screening assessment of all 'plastic manufactured items' and is insufficient basis for the broad category identified in the Proposed Order.

Rather than working with industry and investing in innovation, the Federal Government is using the Canadian Environmental Protection Act (CEPA), Schedule 1 to list "plastic manufactured items" as toxic without the required justification, then using the listing to ban some plastics. **CEPA is not the right tool.** This overreaching decision by the federal government ignores due process and the lack of a true and full science assessment.

A draft screening level risk assessment (DSLRA) would have a different conclusion, would not have led to such a broad designation, would show a significant weight of evidence to suggest that the risk to the environment is not from plastic manufactured items, and show that the risk is not related to the physical/chemical properties of the designated items. We need a forward-looking approach to eliminating plastic waste that is anchored in innovation and public-private collaboration.

Other inconsistencies in established CMP process for adding substances to Schedule 1 were not offered for public comment in draft form. **We have the opportunity to implement innovative solutions to effectively recycle, recover, and reuse plastic waste**. To achieve our goal of keeping plastics in the economy, not the environment, we need to shift our mindset and recognize used plastics as a resource, not a waste. By doing so, we will unlock a future that includes a circular economy for plastics—where products are continuously recycled, recovered and repurposed into new plastic items—and an environment free of plastic waste. Industry is already investing in the research and technology required to make this happen, and these investments, which are creating new jobs across the country, will be key

to our nation's post-pandemic economic recovery. However, no government policy or legislative tool currently exists to effectively manage the lifecycle of plastics.

We should also be designing plastics, particularly hard to recycle plastics for the landfill to be converted to energy. As plastic is made from natural gas this is fully circular. https://www.bioflexpackaging.com/

Plastic Manufactured Items are not Toxic

The Proposed Order is not as specific as a Science Assessment, which would correctly identify the potential harm of plastic pollution in the environment. This applies to every single piece of plastic in Canada, without exception, regardless of how it is disposed.

Risk to the environment does not come from the item, but from behaviours, decisions and/or contract obligations of consumers, waste management groups and municipalities. Intervening steps that must occur before alleged risk to environment presents reorganizing the plastic manufactured used by a consumer, the plastic manufactured item has to be improperly disposed of, or poor municipal waste management practices could also contribute

We would like to see a harmonized Circular Economy framework for plastics that includes government and industry working together to achieve the following:

- **Streamlined Plastic Recycling and Recovery**: Plastics producers design, fund and manage the systems to recover and recycle the products they create, with governments setting targets.
- **Innovation and Technology Investments:** Direct investments and expansions in advanced recycling technologies will enable Canada to recover value from all used plastics.
- **Support to Establish End-Markets for Recycled Plastics:** Standards for recycled content in products, government procurement, and tax incentives to stimulate use of recycled plastics are three key ways the Federal Government can help advance our vision for a world free of plastic waste.
- **Support for both Anaerobic (compost) and more importantly anaerobically degradable polymer based alternatives:** Many plastics are difficult to recycle and there are viable alternatives such as our own Bioflex™. These products are actually fully circular as they turn back into gas which is collected by landfill caps and turned into energy. They also provide a viable solution to the ocean plastic concern. https://www.bioflexpackaging.com/

Declaring plastic manufactured items as toxic when these acts contribute to the adverse outcome ignores the true cause(s) of the unacceptable risk.

Plastic materials are not found to be toxic when the exposures of concern do not emanate from an intended use. The identified risk does not come from the plastic item itself; it is from disposal after intended use.

Science Approach Document published without a complete view of the best available science lacks a comprehensive review of scientific literature. DSLRA approach would have led to a more fulsome review of scientific literature and application/contextualization to pollution in Canada and would not have concluded that all plastic manufactured plastic items have the potential to cause ecological harm. Finally, a designation must be more precise to target individual concerns.

We do not agree with the proposed order to add "plastic manufactured items" to Schedule 1.
Designating plastic manufactured items as "toxic" without a proper risk assessment undermines:

- The principles of Canada's risk-based management system for chemical substances under CEPA.
- The work undertaken by industry, provincial governments and municipalities to increase the collection and recycling of plastics.

We urge the government to:

- Undertake a more thorough assessment of the science and consequent risks relating to specific substances before developing or implementing any risk-mitigation measures under CEPA.
- Continue to work with stakeholders, the provinces and territories to build a circular economy framework that identifies the most effective actions to achieve zero plastic waste.
- The following outlines our concerns with the proposed order to add "plastic manufactured items" to Schedule 1.

Proposed Addition to Schedule 1, Broad Target Under Proposed Order

Plastics are highly technical. The CIAC is a well resourced and strong partner with many of the complex technical issues that have led to roadblocks in more circularity. Canada's chemistry industry is a strong partner of Environment and Climate Change Canada (ECCC) and Health Canada in the implementation of the Chemicals Management Plan (CMP).

Layfield is also partnered with many other associations including the Western Plastics Association.

Over the past two decades, the CMP has been a tremendous Canadian success story:

- Categorized 23,000 substances.
- Completed comprehensive risk assessments for 3,600 substances.
- Successfully influenced chemicals management policy and approaches across the world from the U.S. and Australia to Mexico and Brazil.
- The well-established risk assessment pathways under CEPA and the CMP are rigorous and scientifically sound. This chemicals management policy framework needs to be upheld for the CMP to remain credible.

The proposed approach raises the following concerns:

- The proposed designation of "plastic manufactured items" as "toxic" represents a significant departure from the precedence established for managing chemically distinct substances under CEPA.
- Schedule 1 would create an extremely broad target, capturing all plastic items, including electronics, automotive parts, construction materials, personal protective equipment and food packaging approved by the Food Directorate's Bureau of Chemical Safety.[1]
- Adding chemically inert plastic items that the government says are safe for food packaging to a list of substances that have undergone risk assessments and determined as toxic will undermine the integrity of Canada's chemicals management system and create confusion among stakeholders and the public.

Final Science Assessment of Plastic Pollution, Data Gaps

Agree with:

- ECCC's characterization of the *Final Science Assessment of Plastic Pollution* as "a review of the current state of the science on plastic pollution."
- ECCC acknowledges the Science Assessment is "not intended as a substitute for a chemical risk assessment" and that "typically a chemical risk assessment is conducted to assess the potential for risk to the environment and human health associated with the substance." [2]
- ECCC says in its online fact sheet that a state of the science report consolidates the latest environmental and health research on a substance and "does not typically include a regulatory conclusion on the substance."[3]

Additional study is required to determine the scientific factors and consequent risks associated with specific substances before any risk management actions should be taken.

- The Science Assessment outlines "significant data gaps … that preclude the ability to conduct a quantitative risk assessment."
- The recommendation that "action is needed to reduce macroplastics and microplastics that end up in the environment" applies too broadly and generally to plastics to provide clear direction on risk-mitigation measures.
- Rather than pursuing specific forms of risk management, the proposed order, if implemented, could be used to "manage plastic manufactured items along their entire lifecycle."[4]
- Risks must be clearly defined through a proper risk assessment so that cost-effective management strategies and actions can be undertaken.
- The Science Assessment falls short of providing the data and analysis necessary to make any determination of risk under CEPA.

[1] https://www.canada.ca/en/health-canada/services/food-nutrition/legislation-guidelines/guidance-documents/lists-acceptable-polymers-use-food-packaging-applications.html
[2] ECCC. 2020. *Final Science Assessment of Plastic Pollution,* p. 14.
[3] https://www.canada.ca/en/health-canada/services/chemical-substances/fact-sheets/types-chemicals-management-plan-risk-assessment-documents.html
[4] http://www.gazette.gc.ca/rp-pr/p1/2020/2020-10-10/html/reg1-eng.html

Precautionary Principle, Risk Assessment

Precautionary principle.

- The precautionary principle defined in the Rio Declaration, states, "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."
- Under section 76.1 of CEPA, the Environment and Health Ministers are required to apply both a weight of evidence approach and the precautionary principle when conducting or interpreting the results of assessments and decisions of other jurisdictions.
- According to ECCC's *A Framework for the Application of Precaution in Science-Based Decision Making about Risk*, the use of precaution affects "decision phases within science-based risk management" and is "clearly linked to scientific analysis, and cannot be applied without an appropriate assessment of scientific factors and consequent risks."[5]
- The Science Assessment recommends taking action to reduce macroplastics and microplastics that end up in the environment, in accordance with the precautionary principle, yet, as mentioned, it concedes "significant data gaps" are preventing the completion of a quantitative risk assessment.

The precautionary principle has been applied inappropriately.

- A risk assessment has not been completed.
- The evidence has not yet established a clear link between the Science Assessment and the decision to list all plastic manufactured items on Schedule 1.
- The evidence does not support why such a broad listing is required.

Treaty Obligations and Trade

Parties to the Canada-United States-Mexico Agreement (CUSMA) agreed to a risk-based approach to chemicals management.

- CUSMA Sectoral Annex 12A.4.3, each party has agreed it "shall endeavor to use a risk-based approach to the assessment of specific chemical substances and chemical mixtures, where appropriate. Each Party also intends to encourage, as appropriate, a risk-based approach to regulating chemical substances and chemical mixtures both in international fora and in its relations with non-Parties."
- Skipping a risk assessment of specific substances not only undermines Canada's CMP, but it also breaks Canada's commitment under CUSMA to use a risk-based approach domestically while promoting it internationally.

[5] https://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=EE479482-1&wsdoc=08911AB8-D8D7-B548-3C28-9A134BD20ED1

- The plastics sector's supply chains span the globe. The free flow of goods and services sustain many good, well-paying jobs that could be put at risk by the policies and regulations implemented based on the final order.
- The government has already proposed to ban six categories of single-use plastics, yet it remains unclear how many more plastic items will be banned once plastic manufactured items have been added to Schedule 1.
- If the government pursues product bans, any policies or regulations must provide exemptions for importing materials, manufacturing plastic items and exporting those products to other markets.
- Doing otherwise would be inconsistent with Article 2.2 of the TBT Agreement, which requires "that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade."

Conclusion:

Government Commitment to Sound Science

A scientific panel should be established to review government's work, one that has no vested political interest in the outcome of the investigation. Government admitted to scientific gaps in Science Assessment that preclude the ability to conduct a quantitative risk assessment – a panel could fill these gaps.

Moving ahead with significant data gaps is not overly precautionary, but rather 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."

- For almost all cases the alternatives to plastic have a worse environmental footprint. Our intuition often leads us to offering worse consequences with regards to sustainability.
- This will have harmful consequences to both our water and air
- A board review would serve a rational sounding board to what has become an emotional issue.

Layfield has expertise and experience in recycling, polymer formulations, extrusion, converting, laminating and its own brand ownership. We would be happy to provide viable technology and resources that can be implemented on a wide scale immediately.

Currently manufacturers in Canada face an uphill battle versus importing countries with significant advantages. This is another blow to our industry chasing good jobs, technology and expertise from our country. We look forward to working with government for a brighter future.

Sincerely,

Mark Rose
President, Flexible Films Layfield Canada Ltd.