

December 8, 2020

By E-Mail

The Honourable Jonathan Wilkinson
Minister of the Environment and Climate Change

c/o Mr. Thomas Kruidenier
Interim Executive Director
Program Development and Engagement Division
Department of the Environment
Gatineau, Quebec
K1A 0H3

Dear Minister Wilkinson:

**Re: Notice of Objection and Request for Board of Review
Proposal to add “Plastic Manufactured Items” to Schedule 1 of the *Canadian
Environmental Protection Act, 1999***

NOVA Chemicals Corporation (NOVA Chemicals) submits this notice of objection in response to the October 10, 2020 Canada Gazette notice with respect to the proposed addition of “Plastic Manufactured Items” to Schedule 1 of the *Canadian Environmental Protection Act, 1999*, (CEPA).

We also request that a Board of Review be established pursuant to CEPA, s. 333.

NOVA Chemicals’ objection is primarily based on the following:

1. The Use of CEPA Schedule 1, List of Toxic Substances, is inappropriate in respect of Plastic Manufactured Items;
2. Plastic Manufactured Items are not a “Substance” for the purposes of CEPA Schedule 1; and
3. Plastic Manufactured Items are not “toxic” within the meaning of CEPA.

About NOVA Chemicals

NOVA Chemicals is Canada’s largest petrochemical company and plastic resin producer employing over 2,500 people worldwide, over 2,000 of whom are based in Canada at our head office, technology sites and manufacturing facilities in Ontario and Alberta.

Plastics bring great value to society through performance benefits derived from their light weight and high strength, making plastics the preferred alternative for many packaging, industrial, and durable goods. NOVA Chemicals knows that these products do not belong in the environment as unmanaged waste. Our commitment to ensuring plastics stay out of the environment and realize their significant value is a core element of our Sustainability Strategy. NOVA Chemicals is a founding member of the Alliance to End Plastic Waste, a CEO-led, cross value chain initiative pledging \$1.5B USD to end plastic waste. We are also a strategic partner of Project STOP, a program currently delivering waste management and plastics recycling services to three cities in Indonesia. In Canada, we are the lead corporate sponsor of the Great Lakes Plastic Clean-up, an initiative we are proud to support with ECCC, MECP, and others to prevent litter from entering the Great Lakes at marina locations across Ontario.

At NOVA Chemicals, we are committed to working towards a circular economy. Our goal is to achieve 100% of plastics being recyclable or recoverable by 2030, and 100% of plastics packaging being reused, recycled, or recovered by 2040.

NOVA Chemicals has many examples of our commitment to a plastic circular economy, including designing recyclable packaging structures, innovating new products which better accept recycled content, and working to include recycled polyethylene as part of our product slate. In 2020, we partnered with Merlin Plastics of Vancouver, BC to produce over 30MMlbs/yr high quality recycled polyethylene which can be used in consumer packaging again. We also announced a joint development agreement with Enerkem, a Quebec based company, to convert municipal solid waste, including MRF residuals and unrecycled plastic waste, into new feedstock for the production of polyethylene.

We are also committed to Operation Clean Sweep Blue, a best management practice to keep plastic pellets, flake, and powder out of the environment, with increased transparency in reporting all plastic spills.

Issues of Concern

1. The Inappropriate Use of CEPA Schedule 1 - List of Toxic Substances

The Science Assessment on Plastic Pollution¹ (“Science Assessment”) specifically assessed plastic pollution as microplastics and macroplastics, which categorize a broad mixture of plastic compositions into two size classes. The Science Assessment made no mention of Plastic Manufactured Items causing harm to biota or the environment. The potential harm identified in the Science Assessment relates only to a handful of specific macroplastic items. The proposed CEPA Schedule 1 listing is not for these specific macroplastic items. Instead, the proposed listing is of a category (Plastic Manufactured Items), which would contain every product manufactured from plastic in Canada. This category of Plastic Manufactured Items was not addressed in the Science Assessment.

The proposed use of CEPA to list Plastic Manufactured Items on Schedule 1 does not appropriately address plastic pollution which is primarily a waste management issue. The Science Assessment does not state that plastic products in and of themselves are an environmental problem, but correctly suggests that improper management of plastic solid waste is the issue. The Science Assessment states that the “poor management of plastics across their

¹ ECCC and Health Canada, “Draft Science Assessment of Plastic Pollution” (January 2020), online: <https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/draft-science-assessment-plastic-pollution.html>

life cycle, as well as improper disposal, has resulted in large amounts of plastic waste entering the environment as plastic pollution”. Listing Plastic Manufactured Items as ‘toxic’ and banning certain single-use plastics inappropriately targets the *use* of plastic products rather than the *pollution* of plastics resulting from the lack of infrastructure, consumer education, and markets to drive secondary use of plastic products. The real issue raised by the Science Assessment is the concern that the systems that manage those products do so inadequately. These waste management issues are clearly an area of provincial jurisdiction. There is no sufficient justification for federal intervention, especially in light of the efforts several provinces have underway to modernize their recycling waste management systems.

Moreover, the Science Assessment is based on a literature review only, without any quantitative studies using current Canadian data. Listing plastic products on CEPA Schedule 1 based only on a literature review and without the rigor of a risk assessment significantly undermines the spirit and principles of transparency and evidence-based decision-making that are expected under CEPA and the Chemicals Management Plan (CMP). One of the core strengths of the CMP has been its reliance on risk-based decisions. Science should continue to inform decisions and Canada should not rush into development and implementation of risk mitigation efforts using Part 5 of CEPA before a more thorough assessment and evaluation of underlying risk(s) is undertaken, and cost-effective ways to address those risks are identified, evaluated, and appropriately focused. To approach chemicals management otherwise opens the door to regrettable and unintended consequences as a result of uninformed decisions. We request that Canada conduct a thorough chemical risk assessment of plastic pollution prior to developing and implementing risk mitigation efforts using part 5 of CEPA.

2. Plastic Manufactured Items are not a “Substance” for the purposes of CEPA Schedule 1

CEPA allows for the addition of substances to Schedule 1 under certain conditions, namely that the substance has been scientifically assessed and determined to be “toxic”. Substances must be assessed individually and added to Schedule 1 separately. As such, any substance proposed for addition to Schedule 1 must be identified with sufficient precision to permit the toxicity assessment. While any single “Plastic Manufactured Item” could be a substance within the meaning of this definition, an aggregate listing of “Plastic Manufactured Items” which includes thousands of items is not sufficiently precise to permit such assessment.

3. Plastic Manufactured Items are not “toxic” within the meaning of CEPA

The statutory authority within CEPA for a designation of toxicity for a substance requires actual or potential harm or danger to human health or to the environment, together with a linkage between the concentration, quantity or conditions under which such substance is entering the environment and such harm or danger. As noted above, the Science Assessment does not consider Plastic Manufactured Items as “substances”, because it does not address the items themselves. It therefore cannot make any rational designation of toxicity of those items as it cannot possibly assess the quantity, concentration, or conditions under which they are entering the environment. There is therefore no basis to determine that such substances pose a sufficient risk to the environment to warrant the “toxic” designation under CEPA Schedule 1.

A “toxic” designation for Plastic Manufactured Items is also inaccurate definitionally – since plastics are inert materials – and would blur the line with those substances that are truly toxic and are properly managed under CEPA Schedule 1.

Request for Board of Review

NOVA Chemicals requests that a Board of Review be established under CEPA s. 333 to address the concerns set out above, in a manner that supports a commitment to science and risk assessment.

Please contact Sarah Marshall at sarah.marshall@novachem.com or (403) 750-3279 should you require any further information.

Yours truly,



Luis Sierra,
President & CEO