



December 08, 2020

The Honourable Jonathan Wilkinson, P.C., M.P.
Minister of the Environment
c/o The Executive Director Program Development and Engagement Division
Department of the Environment
Gatineau, Quebec K1A 0H3
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RE: Proposed Order to add plastic manufactured items to Schedule 1 to the *Canadian Environmental Protection Act, Canada Gazette, Part I, Volume 154, Number 41: Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999 (CEPA)*

The Pine Chemicals Association International (PCA) represents many worldwide companies with interests in producing and using natural, sustainable, “green” chemicals derived from trees. Although we do not produce plastics per se, many of our products are used in conjunction with plastics as components of adhesives, printing inks, coatings and additives to improve their end-use properties. Almost all pine chemicals are imported into Canada either by themselves or as part of plastic articles and so form a small, but significant, and often irreplaceable part of Canada’s international trade.

The PCA formally objects to the Proposed Order and requests that “plastic manufactured items” not be listed on Schedule 1 of the CEPA.

Our overall position is that declaring plastics to be a Schedule 1 CEPA Toxic Substance is the wrong way to go about solving what is obviously a waste disposal problem. Force-fitting CEPA to a use for which it was not designed will only lead to a distortion and dilution of what has been an exemplary regulation. It will cause the public to believe that plastics really are toxic, which they aren’t. And it will interfere with international trade which is particularly important to the pine chemicals industry.

DRAFT SCIENCE ASSESSMENT

In the opinion of the PCA the draft science assessment, which was used as a basis for the Proposed Order, is neither an assessment nor a risk assessment, but a simply a literature review coupled

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with broad research recommendations non-specific to any plastic product, packaging, or resin. It is neither legally nor technically sufficient to support adding plastics as a broad category to CEPA Schedule 1, which would result in a “CEPA toxic” classification. Section 64 of CEPA defines a *substance* as “toxic” if it is entering or may enter the environment in a quantity or concentration or under conditions that:

- have or may have an immediate or long-term harmful effect on the environment or its biological diversity;
- constitute or may constitute a danger to the environment on which life depends; or constitute or may constitute a danger in Canada to human life or health.

“Plastic” is not “a *substance*” under CEPA. “Plastics” is generally understood to mean a subset of chemically-distinct polymeric substances. There are many thousands of unique polymers used in commerce today, each of which having its own chemical identity, chemical resistance, and other characteristics. In addition, polymers are compounded to make plastic, such that each particular “plastic” used in a particular application is composed of a number of chemically distinct substances. Without any basis in fact the Draft improperly “groups” all plastics, and thus does not reach individualized findings that support further action on any particular plastic, plastic packaging, or resin.

In summary, the Draft is only a literature review that broadly considers available information about macroplastics and microplastics, but does not individually assess each “plastic,” either with respect to the specific polymer relevant to that plastic or the relevant and specific additives; each plastic as used in packaging; or each plastic as used in a particular product. Nor does it consider the adhesives, coatings or other additives provided by plastic chemicals. There is no nexus presented with respect to generalized findings about the broad category of “microplastics” and specific resins, products, or packaging.

THE DRAFT IS NOT A RISK ASSESSMENT

The Draft isn’t a risk assessment as that term is understood in chemical management programs across the world. It does not adequately present specific findings that take into account the hazard, use, exposure, and environmental fate specific to each plastic, plastic packaging, and resin. It does not support substance-specific findings related to the entry of the substance into the environment in a quantity or concentration or under conditions that justify further action. To support further action under CEPA a scientific assessment would need to be able to identify which products are of concern, the specific hazards of that product, and to describe exposures to the product and quantify the particular health or environmental concern arising from that particular product. The Draft does not do this and simply skips the risk assessment called for under a CEPA review of a true toxic substance.

Nor is the Draft a problem formulation of a risk assessment, since it falls well short of presenting specific, discrete recommendations. If a particular product, packaging, or resin is evaluated, using best available science and weight of the evidence, taking into consideration the quality of studies,

and as a result, is deemed to present significant enough concern to warrant a risk assessment, then a robust scientific risk assessment could proceed. However, it doesn't do this at all. Formal consideration of whether there are technically and economically feasible alternatives that benefit health or the environment, compared to the use so proposed to be prohibited or restricted, and when they will be reasonably available as plastic substitutes when the proposed prohibition or other restriction takes effect was never done. This work should occur before taking risk management action.

We recommend that the Canadian government consider carefully *“A Strategy on How to Incorporate a Problem Formulation Step into Alternatives Assessment Activities Within the Chemicals Management Plan,”* a white paper submitted by the CEPA Industry Coordinating Group to Environment & Climate Change Canada and Health Canada before considering other alternatives to plastics. Skipping a proper Problem Formulation before doing an Alternatives Assessment or even worse, picking an alternative without them, will likely result in “regrettable substitution” making the overall environmental problem worse. For example, it is well known that substituting single-use plastic grocery bags by supposedly sustainable paper grocery sacks, is a net contributor to both air and water pollution, while not solving the plastics disposal problem because consumers end up purchasing additional new plastic bags for garbage disposal. And replacement of plastic food packaging will result in more food wastage and potential for contamination, both a drain on the environment and economy.

PLASTICS ARE SIMPLY NOT TOXIC UNDER THE NORMAL USE OF THE WORD AND WILL CONFUSE THE PUBLIC

CEPA is ill-suited to evaluating polymers which would be considered low hazard in any chemical management regime. For example, many polymers are so low in toxicity that they are widely considered non-toxic and would be eligible for the polymer exemption under the US Toxic Substance Control Act. Under the revised TSCA in the US, these polymers might be better considered low priority for risk evaluation under that statute. Likewise, polymers used in contact with foods for food packaging applications already regulated to meet the US Federal Food and Drug Administration's criteria for safety – taking migration into foods into account.

The Canadian public has long understood the non-toxic nature of plastics and is comfortable with the protection that they give to foods, drugs and medical devices, especially now with the corona virus. For the Canadian government to suddenly have to explain that they are now “toxic” but would still have to be used in the above applications would be an irresponsible, confusing public relations nightmare, reducing government believability. The public health consequences of making a CEPA toxic determination that the public would associate with plastics, plastic packaging, or resins will surely be misunderstood and misinterpreted by the public at a particularly inopportune time.

USING THE DRAFT AS THE BASIS FOR BANNING PLASTIC ARTICLES WILL VIOLATE THE CANADA-U.S.-MEXICO TRADE AGREEMENT.

The Canada-U.S.-Mexico Agreement (CUSMA) was ratified by the Canadian Parliament on Friday, March 13 and entered into force on July 1, 2020. It contains several regulatory cooperation provisions that require Canada to work closely with its partners to foster greater regulatory compatibility on chemical substances in North America. These provisions include the following:

- Each Party 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
- The Parties shall endeavor, if appropriate, to align their respective risk assessment methodologies and risk management measures for chemical substances and chemical mixtures provided that alignment does not prevent a Party from determining and achieving its levels of protection. In its alignment efforts, each Party shall strive to continue to improve its levels of protection.
- Each Party, when developing, modifying, or adopting a measure concerning chemical substances or chemical mixtures, shall endeavor to consider how a measure adopted by another Party could inform its decision-making.

As we have stated above, we believe that the Draft itself is not a risk-based approach. If Canada wishes to proceed under CEPA, we would encourage well-designed, targeted risk assessments be considered.

The lack of a risk assessment could ultimately implicate the Technical Barriers to Trade (TBT) Chapter of CUSMA and the World Trade Organization (WTO) TBT Agreement. Article 2.2 of the TBT Agreement requires WTO Members to “ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade.” Article 2.2 of the TBT Agreement also requires that “technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfilment would create.” If risk management action is implemented against the Draft, this could be considered an unnecessary obstacle to bilateral trade in “plastic manufactured items” between Canada and the United States, and would be more trade-restrictive than necessary to fulfill a legitimate objective.

THERE ARE BETTER ALTERNATIVES TO ADDRESSING CANADA’S PLASTIC WASTE DISPOSAL THAN CEPA

It is surely possible to find another, better suited legal mechanism than CEPA to address the issue of plastic waste that could consider the life cycle tradeoffs of alternatives to plastics and better address Canada’s interest in pursuing circular economy solutions to plastic waste issues. CEPA is designed to evaluate *substances* with respect to their potential human health and environmental

risks – not to solve a solid waste disposal problem. We encourage Environment and Climate Change Canada and Health Canada, and other sectors of the Canadian government, to work with industry to find viable solutions, including source reduction, innovative product design and delivery systems, increased recycling, advanced (chemical) recycling technologies, and potentially extended producer responsibility programs, to name a few.

However, if the government insists on using CEPA as a platform for regulatory decision making for plastics waste disposal, we urge Environment and Climate Change Canada and Health Canada to ensure that specific risk assessments be supported by complete scientific assessments for each specific plastic product, packaging, or resin as warranted. Consideration of any pine chemical additive or adjunct to the plastic to improve its utility should also be included, as restrictions on the plastic will automatically restrict the pine chemical use.

We would be pleased to provide any clarification on our position and on these comments and would make ourselves available for any discussions.

Very truly yours,

A handwritten signature in black ink that reads "Nelson Lawson". The signature is written in a cursive, flowing style with a large initial 'N'.

Nelson Lawson, PhD
For Alejandro Cunningham, PhD
President and CEO
Pine Chemicals Association International

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