



December 9, 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
eccc.substances.eccc@canada.ca

RE: Proposed Order¹ to add “plastic manufactured items” to Schedule 1, the List of Toxic Substances, of the *Canadian Environmental Protection Act (CEPA)*; published in the October 10, 2020 *Canada Gazette*, Part I, Volume 154, Number 41: Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999

Dear Minister Wilkinson:

On behalf of the Plastics Industry Association (PLASTICS), we formally object to the proposed Order referenced above. We believe that “plastic manufactured items” should not be listed on Schedule 1 of the Canadian Environmental Protection Act (CEPA). We respectfully request the establishment of a Board of Review to review the recommendation.

PLASTICS is the only organization that supports the entire U.S. plastics supply chain, representing over one million workers in the \$432 billion U.S. industry. Since 1937, PLASTICS has been working to make its members and the industry more globally competitive while advancing recycling and sustainability. There are PLASTICS members based in Canada and other members with Canadian operations.

We share the Government of Canada’s concern with plastic pollution and waste and desire to protect the natural environment. PLASTICS’ tools for manufacturers include a Zero Net Waste² program to maximize diversion from landfills, and Operation Clean Sweep (OCS)³ to prevent resin pellet, flake and powder loss and help keep it out of the marine environment. The Chemistry Industry Association of Canada’s (CIAC’s) Plastics Division recently became a member of OCS, supporting the program’s global reach.⁴ PLASTICS is committed to preventing and mitigating marine debris,⁵ and has supported legislation⁶ that would improve infrastructure, further research, and enhance international cooperation to solve the problem.

¹ <http://www.gazette.gc.ca/rp-pr/p1/2020/2020-10-10/html/reg1-eng.html>

² <https://www.plasticsindustry.org/resources/industry-programs/zero-net-waste>

³ <https://www.opcleansweep.org/about/about-plastics/>

⁴ <https://canadianchemistry.ca/blog/2020/11/16/chemistry-industry-association-of-canada-joins-operation-clean-sweep/>

⁵ <https://www.plasticsindustry.org/supply-chain/recycling-sustainability/marine-debris>

⁶ <https://www.plasticsindustry.org/article/plastics-applauds-senate-passing-save-our-seas-20-act>

Trade and Treaty Obligations

PLASTICS and its members have had positive interactions with Canada and enjoy a robust and reciprocal trading relationship. Canada is the second largest market for U.S. plastics machinery, materials and products. According to the *2020 Global Trends* report, the U.S. plastics industry exported \$12.4 billion worth of goods to Canada in 2019. These goods include products for the healthcare, construction, transportation and consumer markets, to name a few.

We believe that the proposed Order and resulting measures do not live up to the spirit of cooperation found in the U.S.-Canadian trading relationship and in the ratification of the United States-Mexico-Canada Agreement (USMCA). The North American plastics industry has been guided by that spirit over the years. In 2017, PLASTICS and the Canadian Plastics Industry Association (CPIA)⁷ joined with our counterpart in Mexico, the Asociación Nacional de Industrias del Plástico (ANIPAC), to detail a list of North American trade priorities that were shared with each government as negotiations began on the USMCA. Our mutual priorities were received with great appreciation. We urge Canada to uphold the cooperation between our two countries as specified in the USMCA's Sectoral Annex 12-A for Chemical Substances and Article 24.12 for Marine Litter. PLASTICS also believes that the proposed Order is inconsistent with Canada's obligations under Article 2.9 of the World Trade Organization's Technical Barriers to Trade (TBT) Agreement and could be more trade restrictive than necessary under Article 2.2 of the TBT Agreement.

PLASTICS has strong concerns that the proposed Order has unintended consequences for Canadian consumers and manufacturers up and down the plastics supply chain. Consumers will not have access to products on which they rely and are necessary for their daily lives. Adequate substitutes manufactured from other materials might not be feasible or available. The pandemic has reinforced that plastic products, whether it be in healthcare or food service, have been essential to survival during this uncertain time. Another unintended consequence is that many thousands of Canadian jobs, either in the plastics industry directly or in a plastics-dependent industry, could be eliminated because of the proposed Order and its impact on manufacturing for various markets. Particularly impacted will be small to medium enterprises (SMEs), the lifeblood of Canadian plastics manufacturing. Not only will there be job losses, SMEs might need to modify and retool equipment, which is an expensive process. Some businesses could be forced out of business. The impact will be further compounded if the proposed measure affects not only "plastic manufactured items" in Canada, but also their manufacture in Canada, even if entirely for export. Although only six items are proposed to be added to the list, the plastics industry is concerned that other highly popular items will be added to the list in the future, creating uncertainty in manufacturing and further narrowing markets in Canada.

Commitment to Sound Science and Process

The successes and influence of Canada's Chemicals Management Plan (CMP) are due in part to robust risk assessment pathways and adherence to established processes, including under CEPA, and maintaining the framework's integrity will help maintain its credibility. The *Science Assessment of Plastic*

⁷ Members of the former CPIA became part of the Chemistry Industry Council of Canada (CIAC) when it launched a Plastics Division on July 2, 2020; <https://canadianchemistry.ca/blog/2020/07/02/ciac-plastics-division-launch/>

*Pollution*⁸ report is not a screening or risk assessment; we believe it is insufficient to make determinations of risk under CEPA or serve as an appropriate basis for risk management measures. The report identified knowledge gaps and recommended further research, noting it is “not intended as a substitute for a chemical risk assessment” as is “typically... conducted to assess the potential for risk to the environment and human health associated with a substance.”

As a risk assessment has not been completed and a broad listing of “plastic manufactured items” on Schedule 1 is not supported by the evidence, we believe the precautionary principle has also been inappropriately applied. Section 76.1 of CEPA includes the additional requirement of a weight of evidence approach by the Environment and Health Ministers when conducting or interpreting the results of a screening assessment or a review of a decision of another jurisdiction.⁹ This is underscored in Environment and Climate Change Canada’s (ECCC’s) relevant framework which states that “[w]hile the application of precaution primarily affects the development of options and the decision phases within science-based risk management, it is clearly linked to scientific analysis (it cannot be applied without an appropriate assessment of scientific factors and consequent risks).”¹⁰

“Plastic manufactured items” would also be designated as “toxic” under the proposed Order without appropriate risk assessment. The proposed Order is inconsistent with CMP precedent, which addresses chemical substances and their use, not the improper disposal of articles or items after their intended use.¹¹ Identified risks to the environment from “plastic manufactured items” are unrelated to their physical/chemical properties or intended conditions of use, but due to improper disposal. The rationale for this proposed Order could apply to every plastic item in Canada, regardless of any risk from the item itself, how it is disposed, and the actual causes of unacceptable risk to the environment. This approach and a “toxic” designation for a range of consumer products, made from polymers approved for food contact and medical, sends a mixed message to the public absent any substantiation of unreasonable risk from the polymers themselves. Where appropriate regulatory processes have determined the safety of plastics products, approved by authorities such as the Food Directorate’s Bureau of Chemical Safety,¹² such items should not be deemed “toxic.” We are encouraged that concerns with the “toxic” designation from listing on Schedule 1 have been heard, and that this terminology may be open for discussion.

The proposed Order also reflects the Science Assessment description of plastic pollution as “[p]lastic that is discarded, disposed of, or abandoned in the environment outside of a managed waste stream.” While we oppose the proposed Order, it is recognized that a Canada-wide system does not exist to manage plastics in a range of lifecycle stages through disposal. Engagement at the provincial or territory level and with other stakeholders is encouraging for coordinating efforts to address plastic pollution.

⁸ ECCC. 2020. *Final Science Assessment of Plastic Pollution*; <https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/science-assessment-plastic-pollution.html>

⁹ <https://laws-lois.justice.gc.ca/eng/acts/c-15.31/page-9.html#h-63948>

¹⁰ “A Framework for the Application of Precaution in Science-based Decision Making About Risk,” CP22-70-2003E, <http://publications.gc.ca/pub?id=9.686566&sl=0>

¹¹ We note the listing of plastic microbeads that are smaller than or equal to 5 millimeters in size, with the distinction that those used in toiletries, for example, are intentionally introduced to wastewater systems.

¹² <https://www.canada.ca/en/health-canada/services/food-nutrition/legislation-guidelines/guidance-documents/lists-acceptable-polymers-use-food-packaging-applications.html>

Closing

We formally object to the proposed Order and urge the reconsideration of CEPA as a mechanism to address plastic waste issues. Establishment of a Board of Review would demonstrate the Canadian government's commitment to strengthen science in its decision-making, address data gaps, increase transparency, more fully engage agencies that regulate plastics products critical to safety and health, uphold the reputation of CMP, avoid stakeholder and marketplace confusion, and ultimately support an appropriate coordinated provincial and territory approach to keep plastic waste out of the environment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matt Seaholm", is positioned above the typed name.

Matt Seaholm
Vice President, Government Affairs