



December 9, 2020

The Honourable Jonathan Wilkinson, P.C., M.P.  
Minister of Environment and Climate Change Canada  
c/o The Executive Director Program Development and Engagement Division  
Department of the Environment  
Gatineau, Quebec K1A 0H3  
[eccc.substances.eccc@canada.ca](mailto:eccc.substances.eccc@canada.ca)

Dear Minister Wilkinson,

**RE: Notice of Objection and Request for Board of Review in relation to the 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 published Saturday, October 10th, 2020<sup>1</sup>**

This submission responds to the October 10th, 2020 Gazette Notice (“Notice”) in which the Governor in Council, on the recommendation of the Minister of the Environment (“Minister”), proposed an Order to add “Plastic Manufactured Items” to Schedule 1 of the Canadian Environmental Protection Act, 1999 (“CEPA”) (hereafter referred to as “Proposed Order”). The U.S. Vinyl Institute (VI)<sup>2</sup> appreciates the opportunity to comment on the Proposed Order. VI formally objects to the Proposed Order, and requests that you establish a Board of Review under section 333 of the Canadian Environmental Protection Act (the Act) to review the recommendation. As a matter of record, VI supports the comments submitted by the Vinyl Institute Canada and by the American Chemistry Council on this Proposed Order.

As the Canadian government is planning to deem plastics as toxic under Schedule 1 of the Canadian Environmental Protection Act (CEPA), we are writing to express our opposition to any proposed regulation on this matter, and specifically, to note the lack of reliable scientific evidence to support this action from the government, and the absence of a robust and thorough consultation with both industry and the public on this matter.

The Proposed Order states:<sup>3</sup>

Plastic manufactured items that are released into the environment outside of a managed waste stream, or that enter a managed waste stream but are accidentally released into the

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

<sup>2</sup> The Vinyl Institute (VI), established in 1982, represents the leading producers of vinyl resins and monomers, and ingredient and additive producers for vinyl compounds in the United States. The VI serves as the collective voice for the vinyl industry. More information can be found at [www.vinylinfo.org](http://www.vinylinfo.org).

<sup>3</sup> Canada Gazette Part I, Vol. 154, No 41 at 273 (Oct. 10, 2020).

environment, constitute plastic pollution. Current scientific evidence confirms that plastic pollution is ubiquitous in the environment, and that macroplastic pollution poses an ecological hazard, such as physical harm to some animals and their habitat. Current scientific literature also suggests that microplastic pollution may pose an ecological hazard to some animals, though further research is needed. In order to address the potential ecological risks associated with certain plastic manufactured items becoming plastic pollution, the Minister of the Environment and the Minister of Health (the ministers) are recommending to the Governor in Council to make an order adding “plastic manufactured items” to Schedule 1 (i.e. the List of Toxic Substances) to the Canadian Environmental Protection Act, 1999 (CEPA or the Act), in accordance with the precautionary principle.

We support efforts to decrease waste stream leakage and increase recycling. Our fundamental concern with the proposed order arises from: the public policy implications, the lack of factual support demonstrating that the proposal is necessary, and its overbroad inclusion of all plastics, particularly vinyl products.

Quite literally, the Order proposes to classify all plastic products as toxic because 1% of the products are not handled in the normal waste management stream. This would set an unwise precedent that any material can be deemed hazardous when 1% or more is outside recognized waste management streams and when the waste may pose environmental or public health implications when viewed through the lens of the precautionary.

If such criteria is ratified by the Canadian government, the logical implication is unmanaged wastes from many other large industrial activities and their products should also be listed as hazardous. Thus, the order is overbroad and fails to tailor government action to the problem sought to be address.

The vinyl industry has effectively worked for decades to lower emissions to air, water and land. As part of this continued commitment, the VI formed its Vinyl Sustainability Council (VSC) in 2016 to move the entire vinyl industry value chain forward on our sustainability journey. An extensive third-party materiality assessment revealed that waste management concerns were one of the top impact categories in our industry’s effort to improve its sustainability. Accordingly, the VSC formed its V-Cycle Task Force in 2018 to address improvement opportunities such as increasing landfill diversion of vinyl products and promoting resource efficiency throughout the vinyl industry. The V-Cycle Task Force set a goal this year in 2020 to increase post-consumer vinyl recycling by 10% by 2025 compared to 2016 levels. To reach this goal, VSC has created a plan with four key vinyl industry activities:

1. **Improve collection logistics**
2. **Increase recycling capabilities**
3. **Expand end markets for recycle content**
4. **Broaden communications on recycling successes.**

The VI became a signatory of the US EPA America Recycles Pledge<sup>4</sup> in 2019 in support of EPA's mission to improve recycling in the U.S. to a national rate of 50% of municipal solid waste generated by the year 2030. US EPA's effort, also known as '50 by 30',<sup>5</sup> is supported by some 330 signatories to the America Recycles Pledge. We believe industry/government collaboration is more effective than regulation and our incremental efforts as a vinyl industry will help reach our national recycling goal.

Vinyl Institute members and our above sustainability programs will be harmed by the Proposed Order. Canada and the U.S. are excellent trading partners. U.S. manufacturers are concerned that exporting products to Canada that are now deemed 'toxic' will negatively impact their sales (not just in Canada but to other export markets), will require burdensome new shipping authorizations, and can increase costs for carriers delivering plastic manufactured items into Canada that will be required to be transported under undetermined regulations for toxic materials. Safety data sheets will need to be updated for any plastic material deemed to be covered by the Proposed Order. Canadian producers of vinyl materials and additives will also be harmed in the above ways by the Proposed Order. In addition to the stigma of marketing 'toxic' products or even CEPA List 1 products within Canada, the consequences of exporting 'toxic' products into the U.S. are also yet undetermined but will no doubt increase logistic costs and add burdensome compliance documentation. Such action could also violate the U.S., Mexico, Canada Trade Agreement.

These proposed actions seem to be driven by political will rather than environmental compliance and protection with regard to waste management. The fact that this regulation is being "fast-tracked" through the system at a time when most people are focused on our current COVID-19 pandemic emergency, and without a rigorous "risk assessment" process which Canadians and Canada's trading partners have come to expect and rely upon, is of great concern.

The timing of this action is particularly ironic considering the vital and immeasurable role plastics represent in protecting patients, front-line workers, and the general public during the Covid-19 pandemic in keeping the virus at bay. With more pandemics predicted for the future, the fact remains that plastics will continue to play a vital role in controlling viral infection transmission. Plastics are used in a wide variety of applications in our daily lives and are a key contributor to protecting our health and safety, and particularly in the extenuating circumstances we currently find ourselves in world-wide.

The stigma of unscientifically labeling vinyl products "toxic" could also undermine the public's perception of the safety of medical devices which use vinyl components.

Vinyl plastic products are chosen because of their safety, durability, product performance, low carbon footprint, and economic benefits, in addition to their numerous environmental benefits compared to any other man-made materials -- from energy savings due to reduced weight in vehicles, sterility and

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<sup>4</sup> <https://www.epa.gov/americanrecycles/forms/america-recycles-pledge>

<sup>5</sup> <https://www.epa.gov/americanrecycles/us-national-recycling-goal>

safety in healthcare, and improved energy efficiency in the building and construction sectors as only several examples. Vinyl products often have lower embodied carbon than any other regrettable substitutions, which might occur due to your proposed regulation.

**Vinyl Plastics in Society:**

The health and well-being of our global society relies upon, but is not limited to, the following beneficial vinyl plastics products, and in particular for the vulnerable members of our communities:

- Life sustaining health care products including bags/tubing for blood and other treatment fluids, as well as blood pressure cuffs and vascular therapy sleeves
- Surgical masks, gloves, protective gowns and other personal hygiene products.
- Protective suits for exposure to hazardous materials
- Coatings for virtually all wire and cable products to control risk of fire
- Hospital wallcoverings and upholstery which allow for safe disinfection of patient rooms and treatment areas
- Laboratory piping used in health facilities and hospitals
- Potable water, sanitary sewage and electrical piping systems in buildings
- Municipal infrastructure to supply drinking water as well as to maintain sanitary conditions through sewer and stormwater piping systems
- Geotextiles and vinyl sheet piling in road and dam construction
- Windows, doors, skylights, siding, fencing, railings, decking, sheds, housing panels and flooring
- A wide range of automobile components such as seating, dashboards, body side moldings, and door assemblies
- Articles for identification and financial transactions such as driver's licences, health cards and credit cards, and
- Recreational equipment including arena and stadium seating and wall padding.

**No Screening Assessment Was Completed:**

The value and safety of plastic products has been demonstrated over many decades and is supported by sound science and research which needs to be taken into account in evaluating whether such a regulation, and broad-sweeping regulation at that, is required. Consumers want to continue to freely choose plastic products in their day-to-day lives. VI does not support any regulation that impairs industry's ability to provide access to these products for families or workers environment who rely upon

plastics every day for a myriad of applications. Plastics protect us, and are vital to daily life our health, safety, and well-being.

Section 74 of the Act requires that a screening assessment be completed in order for the Minister to subsequently add a substance to Schedule 1 under Part 90 of the Act. It is our view that the final science assessment of plastic pollution is not a screening assessment. Moreover, it is our view that a screening assessment of plastic pollution is not a screening assessment of all 'plastic manufactured items' – and therefore there is insufficient basis for the broad category identified in the Proposed Order.

In order to satisfy the requirement for a screening assessment, the government's own precedent requires that a draft screening level risk assessment (DSLRA) be completed. To our knowledge, the DSLRA has not been completed. Had that occurred, it is our view that the conclusion would have differed and would not have led to such a broad designation. Similarly, it is our view that had a proper risk assessment been conducted, there is a significant weight of evidence suggesting that the risk to the environment is not from plastic manufactured items; nor is the risk related to the physical/chemical properties of the designated items contemplated by the Proposed Order. A Screening Level Risk Assessment would have established that.

VI maintains that a Board of Review is warranted as the Proposed Order to add plastic manufactured items to Schedule 1 is based on a process which is inconsistent with previous Chemicals Management Plan (CMP) screening assessments ("Assessments"). The Proposed Order was not offered for public comment in a draft form where more narrow options, if applicable, could have been canvassed as is established practice under the CMP. This is a significant deviation from the previously established CMP process.

The current approach by regulators to make a blanket determination that all plastics are "toxic" and to potentially ban these products is neither well thought out, nor has provided an adequate opportunity for science, the public, or industry to participate in an organized and methodical discussion or approach to the matter. VI therefore requests all current actions designed to insert this regulation on Schedule 1 be stopped. Schedule 1 is a substance list, not a list for "plastic manufactured items". It is the responsibility of ECCC to the citizens of Canada to pursue the necessary due diligence in accordance with appropriate "risk assessment" protocols.

**Plastic Manufactured Items are not Toxic:**

The Science Assessment of Plastic Pollution narrowly reviews the potential harm associated with the presence of plastic in the environment as a result of unmanaged wastes. The Proposed Order does not comport with the scope of the Science Assessment. The Proposed Order applies to every single piece of plastic in Canada, without exception, regardless of how it is manufactured, used, or disposed of.

The term 'plastic manufactured items' is ambiguous and is not defined in the order. For example, a significant portion of automobiles are made with plastic components. Is the auto considered toxic of just the plastic parts that comprise it? Similarly, vinyl laminates are used on composite wood for durable and

smooth surfaces. Is the entire piece of furniture now deemed toxic or just the plastic laminates? Many clothing articles are almost entirely made from polymers; for example, plastic buttons, water repellant fabrics, and durable plastic zippers and pulls are made from a variety of polymers. Will these clothing articles now be required to be labelled as toxic? As illustrated, the CEPA1 listing will create a regulatory quagmire.

There are at least two intervening steps that must occur before alleged risk to the environment has the opportunity to present itself: the plastic manufactured item has to be used by a consumer and the plastic manufactured item has to be improperly disposed of. A potential third intervening act – poor municipal waste management practices – could also contribute to the potential environmental risk.

To declare the plastic manufactured item as “CEPA Toxic” when multiple subsequent intervening acts contribute to the adverse outcome ignores the true cause(s) of the unacceptable risk. The risk to the environment comes not from the item, but the behaviors, decisions of consumers, waste management practices and municipal policies.

The tradition of the Chemicals Management Plan is that materials are not found to be toxic when the exposures of concern do not emanate from an intended use. In the issue at bar, the identified risk does not come from the plastic item itself. Rather, it emanated from how the plastic is improperly disposed of AFTER its intended use.

Furthermore, it is our considered view that the science assessment of plastic pollution has been completed without a complete view of the best available science. The use of the established DSLRA approach under the CMP would have led to a more fulsome review of the cannon of scientific literature and its application to specific instances of pollution in Canada.

With that in mind, it is our view that the use of a complete collection of the best available science would not have resulted in the conclusion that plastic manufactured items, as a broad category, “may cause adverse effects to aquatic organisms in certain Canadian environments.” Nor do all plastic manufactured items “have the potential to cause ecological harm.” Simply put, not all plastic manufactured items have the potential to cause the ecological harm identified in the science assessment of plastic pollution. The designation, if required at all, requires more precision to target the individual chattels which are of concern.

There is nothing in the science assessment of plastic pollution justifying such a broad categorization.

**Government Commitment to Sound Science:**

As a government committed to sound science, we believe the establishment of a scientific panel to review the work of the government is required. This is consistent with the Prime Minister’s instructions in the Minister’s mandate letter to ensure that “(t)he Government of Canada is committed to strengthen science in government decision-making and to support scientists’ vital work.”

It is our view that the public has a right to have the science underlying any Proposed Order tested by the best available scientific minds. A government that is committed to transparency and scientific rigour should not have any objection to such a test. To categorically state that all plastic manufactured items present the risks identified in the science assessment of plastic pollution is not supported by the conclusions made in the document or the exposure scenarios upon which the document is predicated. Moreover, ECCC's Economic Study of the Canadian Plastic Industry, Markets, and Waste (2019) indicates that plastic leakage (pollution) into the environment from Canada is one per cent.

While continuous improvements in consumer behavior and business practices are warranted, the Proposed Order is not the appropriate action to reduce and eliminate the one per cent leakage into the environment. There is no substantiating report or evidence that the broad designation would address the behaviors causing the environmental leakage.

The government itself identified limitations in the science assessment of plastic pollution. This includes "significant data gaps ... that preclude the ability to conduct a quantitative risk assessment." The government itself called for additional study to determine the scientific factors and consequent risks associated with plastic in the environment. We believe that this is proof of its own truth of the need for an independent Board of Review to ensure that the decisions being made on admittedly incomplete science are as robust as possible. An independent panel has no vested political interest in the outcome of their investigation. The admission by the government of these specific gaps in the literature calls for the very information which could be used by the Minister to reconsider the proposed order.

An independent Board of Review would protect the integrity of the ECCC and HC, as organizations which actions are based on peer reviewed science.

A Board of Review would challenge the conclusions of the science assessment of plastic pollution and act as a check to what we believe is non-peer reviewed data upon which the exposure scenarios are based. If the science assessment of plastic pollution has in fact been peer reviewed, no details have been provided on who conducted such a review and what the findings were.

**We are willing to provide you with the names of experts who could sit as panel members in the event you elect to empanel a Board of Review.**

**Faulty Public narrative:**

It is also of great concern that the current narrative on plastics from the Canadian government seems to mislead the public into believing that plastics are "toxic", which they are not.

We would respectfully request that the Canadian government develop a more accurate and balanced narrative on this issue of unmanaged plastic waste and develop a more responsible communications plan to ensure that the public understands the issue completely.

Bans are very rarely the answer, are fundamentally short-sighted, oppose the free will of the people, and may cause more harm than good. Without consideration of a full impact assessment that

alternatives might cause to the environment and the health and safety of society, bans can cause increased harm. Bans serve only to create negative pressure, add unreasonable burdens to all of society, and cripple civil liberties. Waste of all kinds will be a societal concern for centuries to come, and with the expected and significant growth in the global population in the coming 25 years, solutions for all waste recovery must be developed.

We urge the government to work instead to find solutions with the intention to collaborate with the vinyl industry which is already working hard to develop new recycling and recovery technologies.

**Create Solutions not Bans:**

The enormity of the consequences from this kind of hasty non-peer reviewed regulatory approach will be devastating to our lives and to our economy in both the short and long terms. This Proposed Order will lead to plastic bans that do not take into consideration in a scientific or societal way the comprehensive information provided to the government to date. And, as evidenced by the complete economic global devastation due to the pandemic, this regulatory change will likely act as another significant blow to the Canadian economy.

VI recommends ECCC seek solutions that will bear positive outcomes rather than bans. Consumer education, and greater collection can mitigate unmanaged plastic waste. Increased recovery infrastructure, more efficient mechanical recycling facilities, and new advanced and chemical recycling technologies that convert mixed plastics wastes into useable hydrocarbons should be planned to further conserve valuable resources now ending up as unmanaged plastic waste or in managed landfills.

VI believes there are potentially tens of thousands of jobs waiting to be created to address the management of waste of all materials in society, not just plastic. We encourage the Canadian government to show long-term leadership in sustainability, and lead the way to a cleaner and greener society through innovation, collaboration, and public outreach strategies, all of which we believe are certain to advance Canada's social, environmental, and economic standing domestically and abroad. Doing so will maintain the integrity and value of plastic in society-- which is arguably one of the most important inventions of our time!

Sincerely,

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CC: Hon. Patty Hajdu, Minister, Health Canada