



February 22, 2022

The Honourable Steven Guilbeault, P.C., M.P.  
Minister, Environment and Climate Change  
200 boul., Sacré-Coeur  
Gatineau, Québec, K1A 0H3  
[ec.plastiques-plastics.ec@canada.ca](mailto:ec.plastiques-plastics.ec@canada.ca)

Tracey Spack  
Director, Plastics Regulatory Affairs Division  
Environment and Climate Change Canada  
351 Saint-Joseph Blvd.  
Gatineau, Québec, K1A 0H3  
[Tracey.Spack@ec.gc.ca](mailto:Tracey.Spack@ec.gc.ca)

Dear Minister Guilbeault:

**RE: Notice of Objection and Request for Board of Review in relation to the Proposed Single-Use Plastics Prohibition Regulations under the Canadian Environmental Protection Act, 1999; Canada Gazette Part I, Vol. 155, No. 52 – December 25, 2021**

This submission responds to the December 25<sup>th</sup>, 2021, *Canada Gazette Notice* ("Notice") in which the Departments of the Environment and Health sponsored Single-Use Plastics Prohibition Regulations were published. Dow formally objects to the proposed regulation and requests the establishment of a Board of Review under section 333 of the *Canadian Environmental Protection Act* (the Act) to review the recommendations. We are supportive of the comments filed by the Responsible Plastic Use Coalition and the Chemistry Industry Association of Canada.

As a condition precedent, Dow reaffirms its opposition to the use of the *Canadian Environmental Protection Act* as the primary vehicle for addressing the plastic waste issue. Plastic is not, under the common understanding of the word, a toxic substance. It should not be regulated the same way as formaldehyde, lead, chromium, and other substances which are by their nature intrinsically hazardous substances. Plastics are inert, and any environmental risk is only present due to the failure of intermediaries to properly manage waste or from the deliberate misuse of the product.

Secondly, we remain opposed to any regulatory mechanism that prohibits a substance as a first resort, rather than as a last resort. To remove six items from commerce when the appropriate approach is to ensure they are managed appropriately is an over-reach in regulatory authority.

As provided for by section 332(2) of CEPA 1999, we are filing this Notice of Objection and request that a Board of Review be established, pursuant to section 333 of CEPA 1999, to "inquire into the nature and extent of danger" posed by the six categories of SUPs, for the reasons set out below.

As noted in our previous submissions, it remains our view that:

- The Proposed Regulations are *ultra vires* the enabling authority set out in subsection 93(1) of CEPA 1999 since Plastic Manufactured Items are not a "substance,"
- The Proposed Regulations are aimed at waste management, which is outside of federal jurisdiction, and
- The Proposed Regulations, like the Order, are not created on "science-based decision making".

We want to reaffirm our view that the Proposed Regulations do not target a substance or even a class of substances listed in Schedule 1 of CEPA 1999. As a result, the criteria for toxicity with respect to the six SUPs

targeted by the Proposed Regulations have not been satisfied. There are multiple steps to this analysis, which starts with the absence of definition of the term 'plastic manufactured item.'

The tests in the Proposed Regulations for determining whether plastic checkout bags, cutlery or straws are "single-use", and therefore subject to regulation, are not based in science. The performance criteria do not relate in any way to the potential environmental toxicity of the items based on their composition, but rather are an arbitrary measure of whether the item is "single-use" or not.

The singular focus on "single-use" plastics in the regulation speaks to the inappropriate overbreadth of the original designation which is at the heart of the regulatory authority to enact the ban: all "PMI" were listed as CEPA Toxic, not "single-use PMI."

The parameters of the tests themselves are also arbitrary. The regulatory impact assessment (RIAS) provides no indication of where the test for submersion in water, at a temperature of "82°C and 86°C for 15 minutes," comes from with respect to cutlery and straws. The same is true with respect to the criteria for check-out bags. There is no rationale provided for why 10kg, 53m or 100 times is chosen. In both cases, there is no rational scientific connection between those tests and the original science review document that identified the potential environmental exposure of concern. In both cases, the methodology for carrying out the tests will have a significant influence on their outcome.

A Board of Review would provide an opportunity to remedy the above shortcomings. A targeted and more robust review would place science and risk assessment front and centre, to examine the scientific data available. This specifically includes the quality and uncertainty associated with the data, and to determine, in a credible manner, if "Plastic Manufactured Items" and the six targeted SUPs in fact pose a risk of harm that satisfies the criteria set out in section 64 of CEPA 1999.

With that having been said, we believe that the RIAS does not demonstrate that environmental harm will diminish under the Proposed Regulations. In fact, the RIAS notes that environmental harm could be greater in other respects. The true life-cycle impact of the single use plastics at issue, when contrasted specifically against the alternatives offered by the government, fails to consider the environmental impacts that come from using alternatives to plastic. Table 28 and table 29 in the RIAS do not establish precise metrics for assessing the benefits of the proposed changes. It is our view that these product bans may see a negative impact from an air quality perspective. Of key importance to the government's climate goals, we are also specifically concerned with the absence of any analysis on the impact of increased GHG emissions. The downstream analysis of the substitutes does not consider the increased transportation emissions resulting from the increased weight of material being transported to management facilities.

Ironically, while focusing on the single use attributes of certain plastic articles, there was no evidence provided in the RIAS that the use of substitutes will somehow reduce littering and pollution in the environment. Bans will not address the behaviours causing the environmental leakage. The same behaviour will likely result from single use paper or other alternatives, only the material will be different. The terrestrial impact of substitutes is non-existent. Even paper, when discarded or buried in soil, will last for a long time and could pose the same smothering potential or choking hazards for animals.

To accurately reflect environmental impacts and benefits of the proposed regulation, a full and complete assessment is needed, not only for plastics, but also the substitutes.

### **Interpretation Uncertainties:**

Environment Canada has not offered a definition of key aspects of the regulation. The first, and most important omission, is a definition of plastic. If there is a commonly understood definition of plastic, we would urge the government to provide it.

Second, there is no clear distinction as to the difference between a plastic film or plastic sheet. Normally, this would be measured by the thickness of the resin. This will be important for the inclusion of certain articles that may/may not be covered by the proposed ban.

Third, there is no definition of “multi-layer” for recognizing the various performance attributes of the plastics in question.

Finally, it is our understanding that Environment and Climate Change Canada is taking the position that the proposed ban of “single-use plastic checkout bag” includes all plastic film checkout bags, **in addition to** plastic bags that meet criteria (b) or (c) in section 1 of the regulation. However, the wording of the definition can equally be read as only including those “single-use plastic checkout bags” made from plastic film and that satisfy either (b) or (c) of the definition found in section 1 of the regulation.

The interpretation by ECCC assumes that there is an implied “or” after (a) so that the definition of “single use plastic checkout bags” is defined as being made *either* made of plastic film, or which meet *either* of the two tests. It also points to the fact that these Regulations are about a very particular set of items, made from certain plastic with particular properties while ignoring other properties (i.e., their ability to break down in the environment.)

The alternative interpretation is that there is an implied “and” after (a). The alternative interpretation is supported by the use of “and” at the end of the phrase ““single-use plastic checkout bag” means a plastic manufactured item that is formed in the shape of a bag that is designed to carry purchased goods from a business and”. If this interpretation is correct, then the banned item would have to be made of plastic film *and* would have to satisfy one of either (b) or (c). Clarification is required on this point.

If this interpretation is as intended, the key question we have is “why are the qualifiers under section 1(B) and 1(C) included in the regulation?”

### **CONCLUSION:**

As a government committed to sound science, collaboration, and engagement, we believe the establishment of an independent Board of Review is required to review the work of the government due to the selective analysis outlined in the RIAS. For the reasons set out above, we respectfully request that a Board of Review be convened under section 332(2) of CEPA 1999.

Sincerely,



Michael Burt  
VP & Global Director, Climate and Energy Policy  
Dow Chemical Canada ULC