

June 6, 2019

The Honourable Catherine McKenna
Minister of Environment and Climate Change
Centre Block, Suite 433C
House of Commons
Ottawa, Ontario
K1A 0A6

The Honourable Ginette Petitpas Taylor
Minister of Health
Confederation Building, Suite 356
House of Commons
Ottawa, Ontario
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Dear Minister McKenna and Minister Petitpas Taylor:

Re: Request for Recommendation to the Governor in Council that plastic waste be added to the List of Toxic Substances, under the *Canadian Environmental Protection Act, 1999*

We write as counsel to urge you to recommend to the Governor in Council, under subsection 90(1) of the *Canadian Environmental Protection Act, 1999 (CEPA)*,¹ that all plastic waste (any plastic generated as a waste or discharge from the use or disposal of products or packaging containing plastic) is toxic within the meaning of section 64 of *CEPA* and should therefore be placed on *CEPA*'s List of Toxic Substances (Schedule 1 to *CEPA*).

Scientists in Canada and around the world have already made the case: huge volumes of plastic waste are entering the natural environment, causing widespread and serious harm to the environment and biodiversity, and presenting a danger to the environment on which life depends.² There is also growing evidence that plastic waste may constitute a danger in Canada to human health.³ The conclusion is inescapable as the vast body of scientific evidence establishes, beyond any serious doubt, that plastic waste is toxic, or capable of becoming toxic, within the meaning of *CEPA* subsections 64(a) and 64(b) (and likely also 64(c)). Plastic waste

¹ *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33. ("*CEPA*")

² Personal communication with Dr. Chelsea Rochman, Assistant Professor Department of Ecology and Evolutionary Biology, University of Toronto, regarding her yet unpublished detailed survey of scientific literature regarding plastic waste.

³ Scientific opinion regarding the effect of plastic on human health is that there are significant grounds for concern and for precautionary measures to be taken. Scientific Advice Mechanism (SAM) Independent Scientific Advice for Policy Making *Environmental and Health Risks of Microplastic Pollution Group of Chief Scientific Advisors*. Scientific Opinion 6/2019, Brussels, 30 April 2019.

as defined above must therefore be added to the List of Toxic Substances under Schedule 1 of *CEPA*.

The accumulation of plastic waste in the natural environment is a crisis and urgent action is required. Canada generates 3.268 million tonnes of waste plastic each year.⁴ Environment and Climate Change Canada advises that Canada leaked 29,000 tonnes of plastic waste into the environment in 2016.⁵ At that rate, 79 tonnes of more plastic waste enters the natural environment each day that nothing is done.

As you are aware, effective in 2021, the European Union will ban 10 categories of plastic items with the express goal of reducing the amount of plastic waste that is created.⁶ Further, to combat the build-up in the environment of discarded plastic-based cigarette filters and plastic fishing gear, the EU has imposed an extended producer responsibility scheme requiring producers to cover the cost of public collection systems and, in the case of cigarettes, marking their products with warnings as to the environmental harm created by improper disposal.⁷

The same categories of plastic materials banned in Europe cause the same problems in Canada,⁸ but Canada lags far behind Europe in addressing them. Yet, the Government of Canada has known for many years that these plastics are accumulating in the environment and persist beyond human lifetimes, causing death to wildlife from plastic entanglement and ingestion, and choking and starving ecosystems. The warnings grow daily of the serious harm caused by plastic waste pollution of our soils, lakes, rivers and oceans. The overproduction and overconsumption of unnecessary plastics, and failure to recycle existing plastic materials, create significant and avoidable greenhouse gas emissions.⁹ The existing body of scientific evidence is more than sufficient to support the legal conclusion that plastics, when entering the natural environment, are toxic or capable of becoming toxic, within the meaning of section 64 of *CEPA*.

To engage the regulatory tools available under *CEPA*¹⁰, and to set the stage for bans, restrictions and other initiatives to reduce plastic production and plastic waste, you must recommend that plastic waste (as defined above) be placed on the Toxic Substances List under subsection 90(1) of *CEPA*. This step can and must lead to the development of regulations to protect Canadian and world ecosystems from yet more harm, and to start cleaning up the pollution that currently exists.

⁴ Deloitte, “Economic Study of the Canadian Plastic Industry, Markets and Waste”, PowerPoint presentation, CCME Canada-wide Action Plan on Zero Plastic Waste Workshop Deloitte and Cheminfo (February, 2019).

⁵ Environment and Climate Change Canada, *Canada’s Plastics Science Agenda, Presentation to the Chemicals Management Multi Stakeholder Workshop*, May 24, 2019.

⁶ [Council adopts ban on single-use plastics](#) Press release. European Union May 21st 2019. Directive [text](#).

⁷ Article 8 of “DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the reduction of the impact of certain plastic products on the environment PE 11 2019 INIT.”

⁸ Environment and Climate Change Canada, *Canada’s Plastics Science Agenda, Presentation to the Chemicals Management Multi Stakeholder Workshop*, May 24, 2019, slide 3. See also WWF, *Plastics top “Dirty Dozen” list of litter found on Canada’s Shores*, 22 Feb 2018: <http://www.wwf.ca/newsroom/?uNewsID=27401>

⁹ Centre for International Law, Plastic & Climate: *The Hidden Costs of a Plastic Planet*, May 2019, <https://www.ciel.org/plasticandclimate/>

¹⁰ Particularly, the power conferred by subsection 93(1) of *CEPA* to make regulations in respect of a substance on Schedule 1, List of Toxic Substances.

We urge you to take this action now, and use sections 64 and 90(1) of *CEPA* to begin the process to stop unnecessary production of plastics, to require a circular plastics economy for necessary plastics, to impose extended producer responsibility for the harms caused by such products, and to stop waste plastics from entering the natural environment.

Sincerely

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