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Via E-Mail

Re: Canada Gazette, Part I, Volume 154, Number 41: Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999 dated October 10, 2020 (the "Order")
&
Proposed Integrated Management Approach to Plastic Products to Prevent Waste and Pollution – Discussion Paper, dated October 2020 (the "Discussion Paper")

Comments by the American Fuel & Petrochemical Manufacturers

Dear Acting Executive Director Raper and Director Séguin,

I. INTRODUCTION

American Fuel & Petrochemical Manufacturers ("AFPM") welcomes the opportunity to comment on the Federal Government's efforts to address "plastic pollution" and, most recently, to provide feedback in respect of the Order and the Discussion Paper. AFPM members manufacture the chemicals used to produce plastics and thus are impacted by policies that address the plastics value chain, including policies to address plastic waste. The plastics value chain also is important to our countries' economies, as feedstocks, petrochemicals and finished plastic products frequently cross the U.S.-Canadian border.

In late January 2020, Environment and Climate Change Canada ("ECCC") released its Draft Science Assessment for public comment. The purpose of the Draft Science Assessment was to "summarize the current state of the science regarding the potential impacts of plastic pollution on the environment and

human health…and inform decision-making on plastic pollution in Canada."[1] Its publication was followed by an opportunity for interested stakeholders to comment on the document. AFPM filed comments on the Draft Science Assessment, challenging its technical findings and raising legal deficiencies with the proposed use of *Canadian Environmental Protection Act, 1999*, SC 1999, c 33 ("CEPA") to regulate plastic products.

On October 7, 2020, ECCC announced its intention to move forward with their plans to reduce plastic waste (as opposed to plastic pollution), including recommending that: (a) the Governor in Council issue the Order adding "plastic manufactured items" to the List of Toxic Substances in Schedule 1 of the CEPA; (b) certain single-use plastics be banned; (c) certain recycling requirements be imposed; and (d) plans to extend producer responsibility be developed.[2] The announcement included the following actions:

- The release of the "Final Science Assessment of Plastic Pollution"[3] ("Science Assessment"), which incorporating comments on the "Draft Science Assessment" and to be used as the scientific justification of the "toxic" designation;
- The publication of the proposed Order and Regulatory Impact Statement in Part I of the Canada Gazette, proposing to "add plastic manufactured items" to Schedule 1 of CEPA and deem these materials as "toxic". This publication triggered a public comment period that precedes the final toxic designation; and
- The publication of the Discussion Paper,[4] which sets out the Federal Government's broad framework related to their efforts to address plastic waste.

Plastic pollution is part of a larger issue related to insufficient global plastic waste management infrastructure predominantly in Asia. There is a very clear distinction between plastic waste and plastic pollution. Canada has already implemented a comprehensive waste management system at the federal, provincial and municipality levels. These systems have done an excellent job at limiting plastic pollution. In fact, ECCC's own analysis concluded that only 1% of Canada's plastic waste becomes plastic pollution.[5] In short, plastic wastes that are managed through these systems are not released into the environment and do not constitute plastic pollution.

"Plastics" and "plastic manufactured items" simply do not meet any accepted definition of "toxic." From a practical perspective, plastics provide tremendous benefit to our society and in no way should be considered "toxic." From a legislative perspective, a category of substances like "plastic manufactured items" that refers broadly to countless discrete plastic manufactured items does not meet the any definition of a "toxic" set out by CEPA.

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[1] ECCC and Health Canada, "Draft science assessment of plastic pollution" (January 2020) online: https://www.canada.ca/content/dam/eccc/documents/pdf/pded/plastic-pollution/Science%20Assessment%20Plastic%20Pollution.pdf ("**Draft Science Assessment**").
[2] ECCC, News release "Canada one-step closer to zero plastic waste by 2030" (October 7, 2020) online: https://www.canada.ca/en/environment-climate-change/news/2020/10/canada-one-step-closer-to-zero-plastic-waste-by-2030.html.
[3] ECCC and Health Canada, "Science assessment of plastic pollution" (October 2020) online: https://www.canada.ca/content/dam/eccc/documents/pdf/pded/plastic-pollution/Science-assessment-plastic-pollution.pdf.
[4] ECCC, "Discussion paper on a Proposed Integrated Management Approach to Plastic Products to Prevent Waste and Pollution" (October 2020) online: https://www.canada.ca/content/dam/eccc/documents/pdf/cepa/proposed-approach-plastic-management-eng.pdf.
[5] Regulatory Impact Analysis Statement at "Sources of Release"; Science Assessment at page 8.

As set out in the Discussion Paper, once "plastic manufactured items" are deemed "toxic" by virtue of their inclusion on Schedule 1, ECCC plans to take a variety of action through regulatory and non-regulatory instruments. AFPM has reviewed the Science Assessment (which provides the scientific basis for the Order), the Order, and the Discussion Paper and provides the following comments regarding the overall process used, as well as specific deficiencies and concerns with each document.

II. EXECUTIVE SUMMARY

1. Plastic pollution is a waste leakage management issue.

AFPM agrees with the Order's Regulatory Impact Analysis Statement that plastic pollution occurs where plastic waste is released into the environment outside of a managed waste stream, or enters a managed waste stream but is accidentally released into the environment.[6]

Accordingly, AFPM supports policies designed to improve poor waste management globally, incentivize recycling, and promote research and development in recycling technologies through pilot phases and full commercialization. Effective waste management policies (both regulatory and non-regulatory) must recognize how plastics improve the lives of people while addressing environmental issues, including plastic pollution. Policies must ensure that consumers reap the benefits of plastic products and that plastic waste is properly handled and managed to prevent plastic pollution. Unlike many jurisdictions globally, Canada has existing waste management and environmental regulations that are effective in preventing plastic pollution.

Both the Regulatory Impact Statement and the Science Assessment conclude that only 1% of Canada's plastic waste becomes plastic pollution.[7] The remaining 99% of plastic waste in Canada is managed - largely by provinces and municipalities - through comprehensive waste management, including the licensing of waste management facilities, enforcement of laws prohibiting littering and the release harmful substances into the environment, plastic container deposit programs, and plastics collection and recycling programs. Plastic wastes that are managed through these systems are not released into the environment and do not constitute plastic pollution. To the extent there is pollution, Canada should examine its waste disposal practices ensuring that waste does not become pollution.

AFPM agrees plastic waste leakage into the environment is unacceptable and must be addressed. AFPM supports striving to reducing that 1% to zero, but opposes adding "plastic manufactured items" to the List of Toxic Substances or single-item bans because doing so simply fails to address the underlying causes of plastic pollution while also stigmatizing plastics as toxic, imposing considerable economic costs on industry and creating health, economic, and environmental consequences for consumers.

Given more research is required, why go to a toxic listing and a ban as early as 2021 particularly when discarded rubber tires were a disposal issue, tires were not banned, when discarded batteries were a

[6] Regulatory Impact Analysis Statement at "Issues", online: http://gazette.gc.ca/rp-pr/p1/2020/2020-10-10/html/reg1-eng.html ("**Regulatory Impact Analysis Statement**").
[7] Regulatory Impact Analysis Statement at "Sources of Release"; Science Assessment at page 8.

disposal issue, batteries were not banned, when used paint cans were a disposal issue, paint was not banned. This approach is inconsistent with successful action by government and industry to solve waste issues in the past and is dangerous for the reasons discussed above.

2. The Science Assessment fails to substantiate the listing of plastic manufactured items – or any class of plastics – on the List of Toxic Substances at Schedule 1 of CEPA and a Board of Review should be formed to reexamine the findings.

AFPM's concerns regarding the draft Science Assessment are largely unaddressed by the final Science Assessment. The Science Assessment falls far short of providing the data to substantiate listing "plastic manufactured items" or any individual type of plastic as toxic, and is outside CEPA's existing risk assessment mechanisms and processes that would otherwise ensure a transparent procedure and science-based decision-making. Notwithstanding its name, the Science Assessment acknowledges that it is a summary of previous studies relating to any and all forms of plastics. Moreover, the Science Assessment is deficient in that it does not specifically assess potential impacts plastic pollution in Canada.

The Science Assessment does not consider the toxicity of "plastic manufactured items" individually or as a group, nor does it establish a link between macroplastics and microplastics and the term "plastic manufactured items." The Science Assessment fails to conduct any form of risk assessment in relation to plastics of any kind, including "plastic manufactured items" either individually or as a group. For the purposes of the Order, the Science Assessment is fundamentally flawed because it does not reach a conclusion regarding whether "plastic manufactured items" are toxic in accordance with section 64 of CEPA, which is a necessary prerequisite to a recommendation to add them to Schedule 1. The Science Assessment does not even reach a conclusion regarding the occurrence of any "serious or irreversible damage" that is required to trigger the application of the precautionary principle.

Instead, the Science Assessment acknowledges the uncertainty present in current scientific studies and concludes that additional scientific research is required. The Science Assessment is also very clear that data for Canada is uncertain: while only 1% of Canada's plastic waste enters the environment and becomes plastic pollution, the Science Assessment contains no studies addressing how much of that 1% enters the environment under conditions that cause impacts of the type listed in section 64. Instead, the Science Assessment itself acknowledges that "Canadian occurrence data are often lacking"[8] and there is there is insufficient science to evaluate the exposure levels.[9]

Given the deficiencies of the Science Assessment and in accordance with CEPA Part 11 Section 333, AFPM will be filling a Notice of Objection requesting a Board of Review separately from this submission. A Board of Review should be formed on this issue and a group of independent scientists should be convened by the Minister to review the previous findings of ECCC.[10] Basing any additional actions or instruments on the flimsy foundation this science assessment provides is troubling as it runs counter to ECCC commitment to sound science. ECCC seems to be content with moving forward

[8] Science Assessment at page 32.
[9] Science Assessment at page 12.
[10] https://laws-lois.justice.gc.ca/eng/acts/C-15.31/page-49.html#h-67181

without a full risk assessment accounting for the cost and benefits of all potential actions. Selection of the wrong, or potentially inefficient, actions, such as banning large groups of consumer products, could potentially jeopardize more effective actions, such as enhancements in waste collection and recycling that would not have the negative impacts on international trade that a "toxic" designation would have. When dealing with small percentage of plastic wastes in Canada that is not contained within regulated waste management systems and that end up as plastic pollution, we urge ECCC and Canada to take a reasoned approached back by the best science and a full accounting of cost and benefits to all stakeholders.

3. Using CEPA to address concerns with Plastic Pollution and Plastic Waste is inappropriate.

A review of the Order and the Discussion Paper makes it clear that the true regulatory objective of the federal government is to reduce the amount of plastics that are disposed of in licensed landfills and increase the recycled content of plastics.[11] The objectives appear to have little to do with reducing the small percentage of plastic waste that is not contained within regulated waste manage systems and ends up as plastic pollution through actions such as littering.

The Order and Discussion Paper appear to have little to do with reducing the small percentage of plastic waste that is not contained within regulated waste manage systems and ends up as plastic pollution through actions such as littering or leakage from regulated waste management streams. While the Order is predicated on addressing plastic pollution, the Discussion Paper would seek to create a new approach to plastic waste.

The Federal Government is proposing to achieve these waste management and recycling objectives by using the CEPA to declare that a broad category of plastic manufactured items are toxic in the absence of evidence that such items are in fact toxic within the meaning of the CEPA. The CEPA toxic substances provisions are intended to apply to a limited number of truly toxic substances under the Federal Government's criminal law powers. Plastic manufactured items provide countless societal benefits. Plastic manufactured items are not in any way similar to the types of substances that are properly listed as toxic under CEPA. The real issue when it comes to plastic manufactured items is improper waste management of those items that results in plastic pollution. And it is clear that plastic pollution is not properly addressed through the toxic substances provisions of CEPA. The net result of listing plastic manufactured items as toxic substances is to unnecessarily stigmatize plastics and the plastics industry in Canada.

Simply labeling plastics or categories of plastic as "toxic" or imposing a ban of certain plastic manufactured items is not a comprehensive approach to waste or pollution management, and is unlikely to address the small percentage of plastic waste in Canada that is not contained through proper waste management.

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[11] See, for example, the Discussion Paper at page 1: "Action is needed to eliminate plastic pollution at its source by reducing the amount of plastic waste that ends up in landfills or the environment. This can be achieved through greater prevention, collection, innovation and value recovery of plastic waste and transitioning to a more circular economy for plastics."

A "toxic" designation under CEPA would blur the line between the truly toxic substances intended to be managed by CEPA and those that are not. Canada would be unique on an international basis by stigmatizing its domestic plastic industry by labeling its products as toxic. Such an outcome could materially impact future investment in Canada and threaten what is currently a world-leading manufacturing base and secure domestic and North American plastics supply chain.

4. The Proposed Integrated Management Approach to Plastic Pollution and implementation of potential instruments is being rushed and any actions must be further deliberated to understand their extensive impacts.

Rather than trying to force-fit haphazard waste management into the existing CEPA regulatory scheme, or banning certain plastics that provide enormous health, safety, and economic benefits to society, Canada has an opportunity to address the plastic waste issue in a collaborative and creative manner that can achieve meaningful results. While ECCC has attempted to provide a framework and roadmap to comprehensively address mismanaged plastic waste this process must be allowed to work before rushing to designate "plastic manufactured items" as "toxic" based on arbitrary and self-imposed deadlines. The process to date also fails to consider the effects of stigmatizing a broad class of products and the industry that produces them through a "toxic" designation.

In our previous comments AFPM urged Canada to adopt the following roadmap to achieve a realistic solution: (1) convene multiple stakeholders, including participants throughout the supply chain, to assess the current situation, (2) identify the sources of plastic waste mismanagement that lead to actual plastic pollution, (3) identify potential legislative, regulatory and policy gaps, (4) craft solutions that will better address the underlying causes of plastic pollution in the environment; and (5) implement those solutions.

AFPM appreciates ECCC's efforts in this regard through the Discussion Paper and associated series of webinars. However, the rush to discuss these complex issues and limited stakeholder interaction during these webinars seem to indicate this is more of an effort to appease stakeholders and demonstrate some minimal level of consultation rather than solicit meaningful input and thoughtfully develop regulatory and non-regulatory solutions. With only six, one hour-long webinars to cover complex topics like single use plastic bans, recycled content standards and extended producer responsibility, there is simply not enough time to give these topics the adequate consideration they deserve. The sheer volume of comments and questions provided demonstrate the need for further consultation.

III. ABOUT AFPM

AFPM is a national trade association representing nearly all U.S. refining and petrochemical manufacturing capacity. AFPM members produce the fuels that drive the U.S. economy and the chemical building blocks integral to millions of products that make modern life possible, from clothing to life-saving medical equipment and food packaging. AFPM member companies are also leaders in human safety, process safety and environmental responsibility.

This document provides AFPM's comments on the scientific considerations provided in the Final Science Assessment, the appropriateness of listing "Plastics Manufactured Items" as "Toxic" as proposed in the Order, and the potential regulatory and non-regulatory instruments laid out in the Discussion Paper. In addition to the specific comments provided in this document, AFPM requests that the Federal Government and ECCC:

- **Reconsider the mechanism and process (CEPA Listing) being used to address the impacts of plastic waste in the environment and pursue other more appropriate avenues to address plastic waste in the environment rather than using inappropriate and stigmatizing toxic substance designations under CEPA,**

- **Convene a Board of Review to independently review the final science assessment before any designation is finalized, and**

- **Conduct more meaningfully consultations with realistic timeframes and ample opportunity for dialogue regarding each of the three major areas of the proposed integrated framework (Restrictions, Recycled Content Standards, and Extended Producer Responsibility).**

AFPM members have the responsibility of supplying the petrochemicals and derivatives that growing global populations and economies need to thrive while doing so in an environmentally sustainable way. Plastic waste is part of a larger issue related to insufficient global waste management infrastructure predominantly in Asia. AFPM recognizes that, as a component of this wider challenge, mismanaged plastic waste is a significant issue and is committed to engaging in the development of plastic waste management policies. AFPM supports waste policies and programs that improve the lives of people and the environment by improving waste management, incentivizing recycling and research and development, and maintaining consumer choice in modern materials.

Our members abide by numerous chemical policies and regulations administered in Canada, the U.S., and other jurisdictions in which they operate. Many regional policies are shared and discussed internationally through the Organization for Economic Cooperation and Development and the United Nations. In addition, the United States–Mexico–Canada Agreement ("USMCA") includes a sectoral annex on chemical substances and a Chapter 24.12 on marine litter. AFPM realizes this is a global issue and that actions in one part of the world may have wide ranging implications throughout the petrochemical value chain.

AFPM supports a tiered, targeted and risk-based approach to chemical safety. Technology continues to rapidly evolve and we need a regulatory system that adapts to these advances and ensures that North America remains a competitive location for the production of petrochemicals and that consumers are afforded the benefits of plastic products in the most sustainable way possible.

IV. AFPM'S INTEREST IN THE DESIGNATION OF PLASTIC MANUFACTURED ITEMS AT TOXIC

AFPM members manufacture the feedstocks and chemical building blocks for plastics that are central to the plastics value chain and thus impacted by policies to address plastic pollution, such a product bans. That plastics value chain spans North America, as feedstocks, petrochemicals and finished plastic products all frequently cross our northern border. This trade in intermediate products results in tremendous efficiencies that ultimately benefit consumers and the economies of both countries and illustrates how policies adopted on either side of the U.S. / Canadian border can have wide ranging implications on both countries.

1. Healthy North American Trade is Integral to the Success of the Petrochemical Industry.

North American trade is a key element for continued economic growth in both Canada and the U.S. Canada is the second largest trading partner for the U.S. U.S. goods and services trade with Canada totaled an estimated $718.4 billion in 2019 with U.S. exports totaling $360.4 billion and imports totaling $358 billion.[12] Trade flows in feedstock and finished products travel across our shared border in both directions. The U.S. imports significant volumes of crude oil from western Canada and refined products from eastern Canada. Likewise, Canada is a key trading partner for petrochemicals. In 2019, Canada exported $2 billion and imported $ 817 million of petrochemicals alone.[13] The United States is the primary trading partner with Canada's chemical industry, and is the destination for 79% of Canada's exports and source of 66% of Canada's imports.[14] Both our countries are competitive internationally and export oil, refined products, and petrochemicals worldwide.

North American petroleum feedstocks, North American petrochemical and derivatives manufacturers are well-positioned to supply the expected increase in global demand for the many products made from petrochemical building blocks. Because petrochemicals are building blocks used in a wide variety of manufacturing supply chains, the ease of their movement across borders is critical. Furthermore, North Americans benefit from robust environmental, health and safety policies that are among the most protective in the world. It is essential that North American supply chains remain secure and globally competitive to ensure petrochemicals and plastics are produced and managed responsibly.

Trade in all chemicals has more than tripled since the North American Free Trade Agreement came into force, from $20 billion in 1994 to $63 billion in 2014. Petrochemical imports to the U.S. from Canada and Mexico totaled around $419 million in customs value, while exports to both countries totaled around $749 million in customs value.[15] Further, plastics trade is included in the top five export and import categories for both the U.S. and Canada ($13 billion and $11 billion respectively). [16] And while the signing of the USMCA hopefully ushers in a new era of continued North American trade

[12] https://ustr.gov/countries-regions/americas/canada
[13] Chemistry Industry Association of Canada, 2020 Economic Review of Chemistry at page 34, https://canadianchemistry.ca/wp-content/uploads/2020/07/2020-Economic-Review-of-Chemistry-Final.pdf
[14] *Ibid* at page 12.
[15] American Fuel & Petrochemical Manufacturers, AFPM SELECTED PETROCHEMICAL STATISTICS, U.S. Trade Data (December 2016).
[16] *See* Office of the United States Trade Representative, Trade partners summary [accessed April 1, 2020] https://ustr.gov/countries-regions/americas/canada

and economic growth, incongruent approaches to chemical management among the countries, such as deeming manufactured plastics items as toxic, endanger that shared prosperity.

2. North American Policy Coordination is Essential for Chemical Regulation.

The importance of policy coordination between the U.S. and Canada cannot be stressed enough. This importance is amplified when dealing with aspects of the fuel and petrochemical industries that freely trade across the northern border. The U.S. and Canada themselves recognize the need for collaboration and initiatives like the U.S.-Canada Regulatory Cooperation Council and the Commission for Environmental Cooperation, under which a great deal of coordination has taken place, especially in the area of chemicals policy and management of toxic substances. The US *Toxic Substances Control Act* ("TSCA") and the Canadian Chemicals Management Plan ("CMP") under CEPA have served as benchmarks for risk-based management of toxic substances. While some other countries and regions have departed from these scientifically validated approaches, the U.S. and Canada have remained committed to a risk-based approach.

Under the regulatory chemicals management system in North America, there is an expectation that sound science and evidence will form the basis of regulatory decision-making, from new chemicals first entering the marketplace to existing chemicals that have provided for our high standard of living. The foundation of this decision-making and sound science in chemicals management is the consideration of both hazards and potential exposures. The priority under TSCA and the CMP has been substances that are most likely to pose the greatest risks; in other words, those that cause severe harm to human health and the environment and present the greatest exposure pathways to those harms. Plastic manufactured items do not fall within this category of substances.

This type of approach has led to enhanced protection of health and the environment, while allowing consumers to benefit from the many advanced products that make up our modern life. The USMCA provides additional examples of the need for compatible policies, particularly when it comes to chemicals and marine litter. This aspect was so important that the drafters of USMCA ensured that the trade deal included an annex specifically dealing with chemicals (see Annex 12-A) and Chapter 24.12 of the USMCA Environment Chapter (Marine Litter).[17] It is clear that the intention of the USMCA and Annex 12-A is to harmonize the risk-based approach for chemical management and a coordinated response on marine litter between United States, Mexico, and Canada.

It must be noted that public policy that is adopted in one nation could serve as a model for other countries. AFPM has a vested interest in Canadian policy particularly related to petrochemicals and plastics. Regulatory policies in North America that are not compatible or disharmonized have the potential to create trade barriers between important trade partners. AFPM is concerned that uniquely designating plastic manufactured items in Canada as “toxic" will have significant negative impacts on cross border trade within North America. For example, such a designation would create uncertainty regarding the free trade of these so-called "toxic" substances across the border, not to mention additional shipping requirements associated with shipping "toxic" items.

[17] *See* Agreement between the United States of America, the United Mexican States, and Canada, [accessed April 1, 2020] https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/12_Sectoral_Annexes.pdf

As mentioned above, there is a very diverse portfolio of petrochemicals crossing the border that affects a wide variety of manufacturing supply chains throughout North America. Those supply chains often go back and forth across borders, blurring the distinction of purely American and Canadian manufacturing and creating a North American manufacturing bloc. There is no disputing even though North American has a robust plastic waste management and disposal system, plastic waste management is a significant global issue (particularly in Asia); however, with appropriate North American and international policies working in tandem and with meaningful partnerships, the North American Petrochemical industry can continue to play a leadership role in the stewardship of plastic waste. For that to be possible, plastic waste policies must recognize the vital role and many societal benefits that petrochemicals and their derivatives provide our nation and the world, and comport with clear legislative authorities to protect health and the environment.

3. A Comprehensive Risk-Based Approach to Mismanaged Plastic Waste Must Consider the Entire Plastics Value Chain, Recognize the Benefits of Plastics, and Avoid Stifling Innovation.

The management of plastic waste is a global issue that cannot be resolved by North America acting on its own. It is now readily accepted and proven through research that the most significant pathways leading to marine debris occur outside the boundaries of Canada and the United States. While the U.S. and Canada are key players within the global effort to manage plastic waste, simple bans and restrictions in North America will not appropriately address the situation and could unintentionally stifle innovation in product design and mechanical and advanced recycling technologies. Further, inclusion of all stakeholders including the entire plastics value chain, governments of all levels, and consumers in meaningful discussion of data- and risk-based solutions will ensure the most cost-effective and impactful actions are selected.

The current COVID-19 crisis readily demonstrates the importance of plastics, particularly single-use plastics and highlights the short-sightedness of listing an entire class of substances as toxic. At a time when health care facilities use straws to rehydrate patients, personal protective equipment made from plastics protect our frontline healthcare workers from infection, grocery stores are refusing to pack food in reusable grocery bags for sanitary reasons, and plastic cutlery is needed to ensure sanitary food consumption, single-use plastics have a critical role to play in the response to COVID-19. The potential unintended public health consequences of listing single-use plastics – much less plastics more generally – as toxic at this critical juncture could cause considerable and unnecessary difficulties in the public health response to COVID-19 and other infectious diseases. For example, consumers could become afraid to use essential single use plastics such as those used in medical applications or food safety because they are deemed "toxic."

A comprehensive approach developed through a thoughtful process that incorporates all stakeholder feedback is critical. This must be done deliberately and careful and not be rushed to meet arbitrary deadlines. This process should not only consider the impacts of mismanaged plastic wastes but also consider alternatives beyond bans to address plastic pollution. An examination of alternatives is

essential to evaluate more cost-effective solutions that address mismanaged plastic waste while recognizing the tremendous benefits of plastics in our society.

V. AFPM COMMENTS ON THE FINAL SCIENTIFIC ASSESSMENT

AFPM previously provided feedback on the Draft Science Assessment and has reviewed the Final Science Assessment. AFPM has reviewed ECCC's table summarizing and responding to comments received on the Draft Science Assessment.[18]

AFPM's comments on the Draft Science Assessment largely remain applicable to the Science Assessment. Like the draft before it, the Science Assessment references various studies that found that plastics have minimal or no negative effects on the environment or on human health, or found conflicting effects. AFPM remains of the view that the Science Assessment does not provide support for designating the broad category of "plastic manufactured items" as toxic under the CEPA.

In relation to microplastics, the Science Assessment found the effects of pollution on environmental receptors to be "less clear and sometimes contradictory." Further the Science Assessment could not identify e a concern for human health related to plastic pollution[19]

In relation to macroplastics, the Science Assessment determined that "physical harm to environmental receptors on an individual level and to have the potential to adversely affect habitat integrity."[20] However, these studies only provide little information applicable to Canada, the Science Assessment acknowledged that studies looking at the occurrence of macroplastics in the Canadian environment were "often lacking." Despite this lack of Canadian specific data, the Science Assessment pushed forward with data from other areas of the world, even though this may not paint an entirely accurate picture of the situation in Canada.[21] Where Canadian macroplastic studies were available, they were often "often limited to data from litter cleanup initiatives as well as reports in the popular press" or were linked to entanglement or ingestion.[22]

Studies referenced in the Science Assessment indicated that only 1% of plastic waste in Canada actually enters the environment as pollution.[23] However, the Science Assessment does not speak to how much of that 1% may be released under conditions that could cause potential negative impacts on the environment, which is required for a finding of toxicity under the CEPA. Drawing a conclusion of harm and attributing harm to a broad class of "plastic manufactured items" based on studies that are admittedly lacking or based on insufficiently rigorous sources renders the Science Assessment legally deficient and ill-suited to support the Order.

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[18] ECCC, "Summary of public comments received regarding the draft science assessment of plastic pollution" (October 7, 2020) online: https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/summary-public-comments-received-regarding-draft-science-assessment-plastic-pollution.html.
[19] Science Assessment at section 10, page 82.
[20] Science Assessment at section 10, page 82.
[21] Science Assessment at section 5, page 32.
[22] Science Assessment at section 5, page 32.
[23] Deloitte and Cheminfo Services Inc. "Economic Study of the Canadian Plastic Industry, Markets and Waste - Summary Report to Environment and Climate Change Canada" (2019) at section 2.1, PDF page 22 online: http://publications.gc.ca/collections/collection_2019/eccc/En4-366-1-2019-eng.pdf.

The Science Assessment is fundamentally an unreasonable basis on which "plastic manufactured items" should be added to the List of Toxic Substances. It does not purport to assess whether microplastics, macroplastics or "plastic manufactured items" are a toxic substance under the CEPA, and fails to address the nexus between microplastics, macroplastics, and "plastic manufactured items."

As AFPM noted in its prior comments, the Science Assessment ignores the significant variation in the pathways, characteristics and impacts that cause plastic waste to become plastic pollution.

The Science Assessment also continues to suggest that "it is similar to the approach taken for the Science Summary on Microbeads."[24] Respectfully, this suggestion is inaccurate: the Science Summary of Microbeads explicitly considered whether microbeads met the definition of a "toxic substance" at section 64 of CEPA, and then reached a conclusion on the substance's toxicity based on the science reviewed in that summary.[25] The Science Assessment does not reach, or even attempt to reach any such conclusion.

Instead, the Science Assessment unambiguously states that it is not a risk assessment, and recognizes that conducting a risk assessment would be difficult due to the inconsistencies in various data.[26] The Science Assessment's greatest shortcomings are best described by the Science Assessment itself:

> Significant data gaps currently exist that preclude the ability to conduct a quantitative risk assessment, including a lack of standardized methods for monitoring microplastics and characterizing the environmental and human health effects of plastic pollution, as well as inconsistencies in the reporting of occurrence and effects data in the scientific literature.[27]

Application of the "precautionary principle" is not an answer to the fundamental gaps that are clearly apparent in the Science Assessment. As noted in AFPM's comments on the Draft Science Assessment, the precautionary principle continues to be applied without explanation or analysis.

Instead, ECCC simply notes its response that the Science Assessment "has been peer-reviewed and provides a science-based recommendation that action is needed, in accordance with the precautionary principle, to reduce macroplastics and microplastics that end up in the environment."[28]

However, neither this response nor the Science Assessment point to "threats of serious or irreversible damage" associated with plastic manufactured items. Such a threat is a condition precedent to the application precautionary principle under the CEPA, provides that "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." [emphasis added][29]

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[24] Science Assessment at section 1.1, page 14.
[25] See https://www.canada.ca/en/health-canada/services/chemical-substances/other-chemical-substances-interest/microbeads.html.
[26] Science Assessment at section 1.1, page 14.
[27] Science Assessment at section 1.1, page 14.
[28] Science Assessment at section 1.1, page 14.
[29] CEPA at section 2(1) (a).

As ECCC found no threat of "serious and irreversible damage" from plastic manufactured items, these materials cannot be considered a "toxic substance" under the CEPA or through the application of the precautionary principle.

VI. AFPM COMMENTS ON THE ORDER ADDING "PLASTIC MANUFACTURED ITEMS" AS A TOXIC SUBSTANCE TO SCHEDULE 1 OF CEPA

1. "Plastic manufactured items" is too broad a category of substances to be added to Schedule 1

From a strictly legislative perspective, a category of substances like "plastic manufactured items" that refers broadly to countless discrete plastic manufactured items does not meet the definition of a "substance" set out by CEPA. As only "substances" may be added to Schedule 1, "plastic manufactured items" therefore cannot be added to the List of Toxic Substances.[30]

A "substance" is defined to mean "any distinguishable kind of organic or inorganic matter," which suggests that a "substance" must be identifiable and specific. Further, while a "substance" contemplates "any manufactured item," the definition is singular and requires a specific physical shape ("any manufactured item that is formed into a specific physical shape or design during manufacture and has, for its final use, a function or functions dependent in whole or in part on its shape or design").[31] "Plastic manufactured items" is not only plural, but refers to a nearly limitless class of items, each of which has its own specific physical shape and design that permits it to be distinguished from other items.

The reference to a single item or substance is repeated at section 90 of the CEPA and constrains the exercise of discretion by the Ministers and Governor in Council: if satisfied that "a substance" is toxic, section 90 permits the Governor in Council to make an order adding "the substance" to Schedule 1 (emphasis added).[32]

This interpretation is aligned with the risk management approach set out in CEPA, which requires substances to be assessed and added to Schedule 1 on an individual basis.[33] In *R v Hydro-Québec*, [1997] 3 SCR 213 ("***Hydro-Québec***") the Supreme Court of Canada also noted that "specific targeting of toxic substances based on individual assessment avoids resort to unnecessarily broad prohibitions and their impact on the exercise of provincial powers."[34]

2. "Plastic manufactured items" are not a "toxic substance" and cannot be added to the List of Toxic Substances

[30] CEPA at s 90(1).
[31] CEPA at s 3(1), *sub verbo* "substance".
[32] CEPA at s 90(1).
[33] CITE to assessment process policy documents.
[34] *R v Hydro-Québec*, [1997] 3 SCR 213 at para 147.

"Plastic manufactured items" are not a "toxic substance" by either a plain language reading or pursuant to the criteria set out under section 64 of the CEPA.

Before a substance can be added to Schedule 1 through section 90(1), the Governor in Council must be satisfied that a substance is toxic.[35] A "toxic substance" is defined as followed in the CEPA:

> **Toxic substances**
> **64** For the purposes of this Part [*Controlling Toxic Substances*] and Part 6, except where the expression "inherently toxic" appears, a substance is toxic if it is entering or may enter the environment in a quantity or concentration or under conditions that
>
> **(a)** have or may have an immediate or long-term harmful effect on the environment or its biological diversity;
>
> **(b)** constitute or may constitute a danger to the environment on which life depends; or
>
> **(c)** constitute or may constitute a danger in Canada to human life or health. [emphasis added]

In other words, to be a toxic substance under the CEPA, a substance must present a risk of harm (as listed at subsections 64(a), (b), or (c)) and a link between that risk of harm and the quantity, concentration, or conditions under which it is entering the environment.[36] These criteria are not established through the Science Assessment for "plastic manufactured items."

The Science Assessment does not conclude that "plastic manufactured items" are toxic, and these items do not meet the statutory definition of "toxic." Notwithstanding the incongruence between the microplastics and macroplastics reviewed in the Science Assessment and the "plastic manufactured items" contemplated by the Order, a review of the Science Assessment fails to demonstrate that microplastics or macroplastics – and by the Ministers' extrapolation, "plastic manufactured items" – in fact meet the CEPA's definition of a toxic substance.

Certain section 64 criteria for harm are ruled out at the outset. In relation to subsection 64(c), the Science Assessment's conclusions rule out both microplastics and macroplastics as potentially constituting a danger in Canada to human life or health. The Science Assessment concludes that for microplastics, "a concern for human health has not been identified at this time,"[37] whereas for

[35] CEPA section 90(1) states that "the Governor in Council may, if satisfied that a substance is toxic, on the recommendation of the Ministers, make an order adding the substance to the List of Toxic Substances in Schedule 1." [emphasis added]
[36] Or, as noted at para 102 of *Hydro-Québec*, "Before one can know if a substance can give rise to the real or possible harmful effects or dangers spelled out in paras (a) to (c), some assessment or test must be made to determine whether the quantity or concentration or conditions under which a substance enters the environment is sufficient to make it toxic."
[37] Science Assessment at section 10.

macroplastics, "human exposure to macroplastic pollution is not anticipated to be a concern" and did not review studies relevant thereto.[38] As a result, subsection 64(c) of the CEPA is not engaged.

Likewise, the data on microplastics provides no conclusive evidence that would permit the criteria for toxicity at subsections 64(a) and (b) to be met, since the Science Assessment concludes that "evidence for potential effects of microplastic pollution on environmental receptors is less clear and sometimes contradictory, and further research is required."[39] Subsections 64(a) and (b) of the CEPA are therefore not engaged by plastic pollution from microplastics.

As a result, the only remaining avenue would be a determination under subsection 64(a) or (b) that macroplastics are entering or may enter the environment in a quantity or concentration or under conditions that have or may have an immediate or long-term effect and constitute a danger to the environment on which life depends.

However, the Science Assessment falls short of providing evidence that could support such a conclusion, determining instead that "macroplastics have been demonstrated to cause physical harm to environmental receptors on an individual level and to have the potential to adversely affect habitat integrity." [emphasis added][40]

Put simply, the potential for physical harm to individual receptors does not, in and of itself, constitute an immediate or long-term effect, or a danger to the environment on which life depends that is necessary to engage subsection 64(a). Nor does the Science Assessment suggest that either (i) the harm in question or (ii) the potential adverse effect on habitat integrity would constitute or may constitute a danger to the environment on which life depends so as to engage subsection 64(b).

Perhaps most importantly, the key link between the identified risks of harm and the exposure levels have not been made. Section 64 specifically requires that the identified risk of harm from a substance be connected to the quantity, concentration or conditions under which the substance is entering, or may enter, the environment. This connection remains unmade. In fact, the Science Assessment references studies indicating that only 1% of plastic waste actually enters the environment in Canada as plastic pollution. There are no studies indicating what percentage of that 1% enters the environment under conditions that cause impacts of the type listed in section 64: the Science Assessment itself acknowledges that "Canadian occurrence data are often lacking"[41] and there is there is insufficient science to evaluate the exposure levels. The Science Assessment goes on to acknowledge that due to "the absence of standardized methods and techniques," "it is not possible to quantitatively characterize environmental or human exposure levels at this time."[42]

In short, the Science Assessment fails to make the link necessary for a toxicity determination under the CEPA for microplastics or macroplastics, as it does not connect the individual impacts identified in specific studies to the exposure levels at which a substance becomes CEPA-toxic. Having failed to

[38] Science Assessment at section 7.1.
[39] Science Assessment at section 10, page 82.
[40] Science Assessment at section 10.
[41] Science Assessment at section 5, page 32.
[42] Science Assessment at section 5, page 32.

substantiate toxicity for microplastics, macroplastics or for any polymer, the Science Assessment necessarily fails to substantiate toxicity for the broad category of "plastic manufactured items."

The precautionary principle, while important, should not be used to remedy the lack of scientific evidence demonstrating toxicity. While the CEPA recognizes and requires the application of the precautionary principle, it also recognizes the integral role of science and requires it to be applied when identifying environmental problems and its toxic substances provisions are structured around enabling scientific review.[43]

In relation to an order under section 90, ECCC itself states that a substance is "CEPA-toxic equivalent" if it satisfies the definition of "CEPA-toxic" as a result of a systematic, risk-based assessment.[44] When conducting risk-based assessment, Canada's own guidance is clear: "in risk management, sound scientific information and its evaluation must be the basis for the decision to apply precaution and the measure selected in applying precaution."[45]

3. Adding "plastic manufactured items" to Schedule 1 is *ultra vires* to Parliament's powers under the CEPA

In its interpretation of the Federal Government's powers to regulate toxic substances in *Hydro-Québec*, the Supreme Court of Canada made it clear that the "limited prohibition applicable to a restricted number of substances", as "enforced by a penal sanction and undergirded by a valid criminal objection" is what rendered the CEPA's toxic substances provisions valid criminal legislation within the federal head of power.[46]

The designation of a broad category of things such as "plastic manufactured items" as "toxic" in response to landfilling and recycling issues (as opposed to pollution issues) demonstrates a blatant overreach of the narrow, targeted application of Parliament's powers to regulate toxic substances. Neither the term itself nor the process undertaken to add it to Schedule 1 demonstrate the specificity or careful assessment required to validly exercise the Federal Government's criminal law powers.

In *Hydro-Québec*, the Supreme Court of Canada noted that specific targeting and individual assessment is key to the exercise of federal criminal law powers:

> This, in my mind, consistent with the terms of the statute, its purpose, and indeed common sense. It is precisely what one would expect of an environmental statute -- a procedure to weed out from the vast number of substances potentially harmful to the environment or human life those only that pose significant risks of that type of harm. Specific targeting

[43] CEPA at Preamble and sections 2(1)(a) and (i).
[44] ECCC, "Risk assessments under section 90(1) of Canadian Environmental Protection Act, 1999" (date modified: 2019-05-23) online: https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/substances-list/risk-assessments-section-90-1.html.
[45] ECCC, "overview of the Existing Substances Program" (April 2007; modified April 28, 2017) at page 4 online: https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/substances-list/overview-existing-program.html.
[46] *Hydro-Quebec* at para 146.

> of toxic substances based on individual assessment avoids resort to unnecessarily broad prohibitions and their impact on the exercise of provincial powers. [emphasis added]

The Regulatory Impact Analysis Statement states that the purpose is to "to address the potential ecological risks associated with certain plastic manufactured items becoming plastic pollution."[47] This language alone tacitly acknowledges that plastic manufactured items only present an environmental risk where those items are improperly disposed of and become plastic pollution. Despite this recognition that plastic pollution arises from the "leaks" in the waste management system (e.g. littering), no effort at identifying, assessing, and narrowing down what about a "plastic manufactured item" could in fact contribute to plastic pollution is made. Moreover, as noted above, there is no evidence that plastic manufactured items are being released into the environment in Canada under conditions contemplated under the toxic substance provisions of CEPA.

The stated focus of the Order is on the 1% of plastic waste that is released into the environment outside of a managed waste stream (*i.e.*, landfill, recycling, or incineration) that forms plastic pollution.[48] However, it is clear the actual purpose is to regulate plastic waste and matters related to recycled resins through a broad designation of plastic manufactured items as toxic substance. Such regulation at the federal level would result in a significant intrusion into the provinces' jurisdiction over activities related to the manufacture of plastics and the management of waste. The provinces' jurisdiction in this regard is derived from various subsections of section 92 and 92A of the *Constitution Act*.

The Supreme Court held that federal powers over toxic substances should be applied only where the substance is not otherwise regulated:

> There was no intention that the Act should bar the use, importation or manufacture of all chemical products, but rather that it should affect only those substances that are dangerous to the environment, and then only if they are not regulated by law.[49]

According to Canada's studies, 99% of plastic waste is disposed of within a managed waste stream. Those waste streams are regulated by the provinces through comprehensive legislation covering the recycling of certain plastics and the construction and operation of waste management facilities for the proper disposal of non-hazardous (i.e. non-toxic) wastes. The Federal Government itself notes that "in Canada, collection, diversion (recycling and composting) and disposal operations are the responsibility of municipal governments, while the provinces and territories are responsible for the approval, licensing and monitoring of operations."[50]

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[47] Regulatory Impact Analysis Statement at "Issues".
[48] Regulatory Impact Analysis Statement at "Source of Release"; see also Deloitte and Cheminfo Services Inc. "Economic Study of the Canadian Plastic Industry, Markets and Waste - Summary Report to Environment and Climate Change Canada" (2019) at section 2.1, PDF page 22 online: http://publications.gc.ca/collections/collection_2019/eccc/En4-366-1-2019-eng.pdf.
[49] *Hydro-Québec* at para 138.
[50] Federal Government, "Municipal solid waste and the environment" (modified August 9, 2017) online: https://www.canada.ca/en/environment-climate-change/services/managing-reducing-waste/municipal-solid/environment.html.

Further, the estimated 1% of Canada's plastic waste that becomes plastic pollution by falling outside a managed waste stream (*i.e.*, "leakage") is also regulated under provincial environmental laws. Laws against littering or illegal dumping are enforced at both the municipal and provincial level, and provincial transportation laws may require the coverage of loads carried by trucks. The addition of "plastic manufactured items" to the List of Toxic Substances would result in an unacceptable infringement of the regulation of plastics and plastic wastes by the provinces.

4. The regulatory analysis in the Regulatory Impact Analysis Statement fails to consider important economic and long-term societal impacts.

The Regulatory Impact Analysis Statement entirely ignores the considerable costs associated with labelling and stigmatizing "plastic manufactured items" as toxic. Economic matters are to be considered in the decision-making process under CEPA.[51]

The Regulatory Impact Analysis Statement states that Ministers' recommendation to add "plastic manufactured items" is in accordance with the precautionary principle. As the precautionary principle recommends not avoiding "cost-effective measures to prevent environmental degradation" in the face of scientific uncertainty, the total exclusion of any discussion of cost effectiveness or the balancing of economic impacts in the Minister's recommendations represent a one-sided approach to the precautionary principle.

By adding "plastic manufactured items" to the List of Toxic Substances, the Federal Government would signal that plastics are toxic and properly belong alongside PCBs, asbestos, lead and other substances that are obviously toxic. Such a grouping will cause immeasurable harm to the public perception of plastics as a safe, sanitary product that is used in every facet of modern life. The cost of this reputational loss and its corresponding impact on investment in plastics industries in Canada is entirely ignored by the Regulatory Impact Analysis Statement.

A further cost left unexamined by the Regulatory Impact Analysis Statement is the cost of regulatory uncertainty that will follow the inclusion of the incredibly broad category of "plastic manufactured items" on Schedule 1. Once added to the List of Toxic Substances, the innumerable list of items - from toys to automotive parts to medical devices - will be vulnerable to regulation as a toxic substance pursuant to the CEPA's criminal law-based powers. The regulatory uncertainty affects nearly every industry in Canada and is entirely unaccounted for the Regulatory Impact Statement.

Finally, the Regulatory Impact Analysis Statement ignores the cooling effect the Order would have on the plastics industry in Canada and on cross-border plastic trade. The cooling effect may include relocation of facilities to other jurisdictions, with losses inordinately focused in Ontario, Quebec, and Alberta, which have a large and growing petrochemical footprint. Similarly, concerns that an overall reduced ability for Canada to ensure its own domestic plastic manufacturing capacity for medical and sanitary products, as has recently posed issues in relation to other manufacturing industries.[52]

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[51] CEPA at Preamble.
[52] Ryan Tumilty, National Post "Trudeau warns COVID-19 vaccine will come later to Canada than other countries" (November 24, 2020) online: https://nationalpost.com/news/canada/trudeau-warns-covid-19-vaccine-will-come-later-to-canada-than-other-countries.

VII. AFPM COMMENTS ON THE PROPOSED INTEGRATED MANAGEMENT APPROACH TO PLASTIC PRODUCTS

Canada has an opportunity to address the plastic waste issue in a collaborative and thoughtful manner that can achieve meaningful results. With the development and publication of the Discussion Paper, ECCC has attempted to provide a framework and roadmap to comprehensively address plastic waste but this process has been undermined by the current rush to designate "plastic manufactured items" as "toxic" at all costs by arbitrary and self-imposed deadlines. Specifically, while ECCC has opened the associated Science Assessments, Orders, and Discussion Papers to public comment it appears the outcome is already predetermined regardless of stakeholder input.

As we have discussed throughout this document, AFPM has made clear that it has significant concerns with the Science Assessment used as the basis for a Schedule 1 listing of "plastic manufactured items" under CEPA, as well as with the use of CEPA as the legislative vehicle to address plastic waste management issues and broadly deem plastics as "toxic." To this end, AFPM's primary ask of ECCC is to reconsider the use of CEPA as the avenue used to evaluate the impacts of plastic pollution and pursue other more appropriate avenues to address plastic pollution through collaboration with stakeholders and, if necessary, through more appropriate and less stigmatizing legislation than the CEPA. We also ask that ECCC convene a Board of Review to independently review the final science assessment before any designation is finalized.

1. Consideration of the Proposed Integrated Management Approach to Plastic Pollution is being rushed and any actions must be further deliberated to consider their extensive impacts.

To engage with its stakeholders, ECCC is seeking input on their Discussion Paper "A Proposed Integrated Management Approach to Plastics." While comments on the overall process are encouraged, ECCC also asks a list of questions in the Discussion Paper on which they are specifically seeking input. In addition, ECCC announce a webinar series to address additional feedback. Following consideration of the comments, ECCC plans to take several measures, including regulatory and non-regulatory actions which would be developed under the provisions of CEPA. These actions include a single use plastic ban, recycled content standards, and extended producer responsibility provisions.

ECCC has offered a series of 6 hour-long webinars to discuss the proposed integrated management approach to plastic products to prevent waste and pollution. These stakeholder engagement webinars are scheduled between October 2020 and January 2021 with five occurring during the comment period for the Order and Discussion Paper and one wrap-up session in January 2021. The topics of the meetings and dates include:

- Overview of proposed integrated management approach to plastic products to prevent waste and pollution, October 30, 2020
- Managing Single-Use Plastics (Part 1), November 6, 2020
- Managing Single-Use Plastics (Part 2), November 13, 2020

- Establishing Performance Standards, November 20, 2020
- Outstanding issues, November 27, 2020
- Ensuring End-of-Life Responsibility and Recap of Engagement, January TBD

AFPM agrees with ECCC that collaboration with stakeholders across the North America is essential, particularly from those with important roles along the plastics value chain and life cycle as well as other organizations who will be impacted or have a high interest in the proposed approach to manage plastics products to prevent waste and pollution. That said, AFPM has concerns that the limited time spent in these webinars is nowhere near sufficient for ECCC to gather enough information and stakeholder input to make informed decisions.

AFPM notes that the amount of related materials that should be examined and the critical issues and stakeholder feedback that need to be considered for each of the above topic areas is voluminous and would necessitate a series of webinars on each specific topic not just a single hour. In fact, there are effectively only four one-hour-long webinars (dismissing the first and last overview and review webinars) discussing extremely technical and complex issues as well as potential solutions that could drastically impact a variety of stakeholder in North America. While the attempts to provide meaningful opportunity are appreciated, the time given to each topic is far too short have a meaningful discussion.

Looking past the limited time allotted to discuss these topics, the way these webinars have been conducted do not particularly foster a constructive dialogue. Specifically, these webinars have topically reviewed the provisions in the Discussion Paper with intervening "Question and Answer" sessions. To submit a question, stakeholders are asked to draft and submit a question in a comment box. Stakeholders are further instructed to "vote" on what questions they want answered by "liking" other's questions. At the "Question and Answer" session, ECCC would then answer the most "liked" questions. This is clearly a far from perfect system, as the composition of the stakeholders attending can impact the lines of questioning and no follow-up of dialogue is permitted. While ECCC ensures they will address all questions at a later date, the lack of a back and forth dialogue with follow-up and further research is concerning. Meaningful dialogue is needed to avoid potential pitfalls if actions are rushed to be implemented.

Separating our overall concerns with the Science Assessment and the use of CEPA as the vehicle action from our comments on the Discussion Paper, AFPM suggests that ECCC could resolve concerns about the stakeholder input by allotting more opportunity for discussion on each of the major areas of the Discussion Paper prior to action. Specifically, ECCC could expand the breadth and depth of input they receive by conducting additional consultations with realistic timeframes and in a format that provides ample opportunity for back-and-forth dialogue and follow-on research. Based solely on the questions asked at each webinar, it is clear each individual topic could and should be allotted multiple webinars if ECCC truly want to implement effective solutions.

Without more meaningful discussion, AFPM fears the rush to discuss these complex issues and limited stakeholder interaction during these webinars is an indication that this is more of an effort to appease

stakeholders rather than solicit meaningful input and thoughtfully develop regulatory and non-regulatory solutions. With only six one-hour-long webinars to cover complex topics like single use plastic bans, recycled content standards and extended producer responsibility there is simply not enough time to give these topics the adequate consideration they deserve. The sheer volume of comments and questions provided demonstrate the need for further consultation.

2. The Regulatory and Non-Regulatory Instruments Outlined in the Discussion Paper Should Be Paused until the Science Assessment is Reviewed.

ECCC's discussion paper introduces three actions they are considering to address plastic pollution. These actions will be implemented through both regulatory and non-regulatory instruments that are afforded to substances listed on Schedule 1 under CEPA. Given some stakeholders have raised valid concerns and questioned: 1) the use of CEPA as a pathway to regulate "manufactured plastic items" and 2) the methods used and findings of the Science Assessment, AFPM believes the implementation of these actions should be paused until the Science Assessment is reviewed by a "Board of Review" and a determination on the validity of the findings in that assessment is made.

The science assessment is the foundational step in determining a path forward and should be resolved before implementing any regulatory or non-regulatory instrument. Given the considerable concerns relayed in AFPM's current and previous comments on the science assessments as well as other stakeholders' comments, a determination on listing "plastics manufactured items" on Schedule 1 of CEPA is premature. This would not preclude ECCC from continuing discussions with all stakeholders and compiling additional data points on the approach to address plastic waste as proposed in the integrated framework. As stated above, additional dialogue is warranted and could ultimately produce a more meaningful outcome. This would also allow for additional discussion of more appropriate vehicles to address mismanaged plastic waste as many stakeholders agree that using CEPA is not appropriate. To this end AFPM will not provide specific feedback on the approaches described in the Discussion Paper until a Board of Review is granted and a determination on the validity of the Science Assessment is made.

While Discussion Paper includes a series of "Questions for Discussion" many of which are valid and should be answered, this step is premature and thus AFPM will not comment on these questions at this time.[53] Additional review and examination of Science Assessment, through a board of review, could seriously impact the actions ECCC plans to take and could potentially raise additional questions that would require input. In addition, as currently written, the questions appear to forecast a set of given outcomes based on a Science Assessment that many stakeholders dispute.

Answering these "Questions for Discussion" is premature given the Science Assessment used as foundational support for the actions discussed in the Discussion Paper is still very much in question. AFPM's lack of comment on the "Questions for Discussion" does not indicate an endorsement of the proposals rather it demonstrates our concern over the rush to action based on incomplete Science Assessment and no risk assessment. Further, in formulating the "Questions for Discussion", ECCC

[53] ECCC, "Discussion paper on a Proposed Integrated Management Approach to Plastic Products to Prevent Waste and Pollution" pg 16. (October 2020) online: https://www.canada.ca/content/dam/eccc/documents/pdf/cepa/proposed-approach-plastic-management-eng.pdf.

did not frame the issue properly for stakeholders to provide informed comment on potential alternatives to the identified regulatory and non-regulatory instruments or the cost and benefits of those actions. AFPM looks forward to future opportunities for meaningful stakeholder engagement following the resolution of the issues raised in these comments.

VIII. CONCLUSION

Plastic pollution in North America is a waste management issue. In Canada 99% of plastic waste is properly managed through a comprehensive waste management system that keeps plastic waste from entering the environment. AFPM supports reasonable science-based plastic pollution policies but opposes adding "plastic manufactured items" to the List of Toxic Substances or single-item bans because doing so simply fails to address the underlying causes of plastic pollution while also stigmatizing plastics as toxic, imposing considerable economic costs on industry and creating adverse health, economic, and environmental consequences for consumers.

AFPM continues to question the legislative mechanism and regulatory process being used to address plastic pollution as well as the Science Assessment used to justify adding "plastic manufactured items" to the List of Toxic Substances. Despite the objections of many, ECCC continues to rush down this pathway and basing the listing of "plastics manufactured items" on a Science Assessment that is insufficient and improperly applies of the precautionary principle. Rather than trying to force-fit haphazard waste management into the existing CEPA regulatory scheme, or banning certain plastics that provide enormous health, safety, and economic benefits to society, Canada has an opportunity to address the plastic waste issue in a collaborative and creative manner that can achieve meaningful results.

As such AFPM requests that the Federal Government and ECCC:

- Reconsider the mechanism and process (CEPA Listing) being used to address the impacts of plastic waste in the environment and pursue other more appropriate avenues to address plastic waste in the environment rather than using inappropriate and stigmatizing toxic substance designations under CEPA,
- Convene a Board of Review to independently review the final science assessment before any designation is finalized, and
- Conduct more meaningfully consultations with realistic timeframes and ample opportunity for dialogue regarding each of the three major areas of the proposed integrated framework (Restrictions, Recycled Content Standards, and Extended Producer Responsibility).

Thank you for consideration of our comments.