



environmental  
defence  
INSPIRING CHANGE

March 4, 2022

Tracey Spack  
Director, Plastic Regulatory Affairs Division  
Department of the Environment  
351 Saint-Joseph Boulevard  
Gatineau, Quebec  
K1A 0H3

Submitted via email: [ec.plastiques-plastics.ec@ec.gc.ca](mailto:ec.plastiques-plastics.ec@ec.gc.ca)

**Re: Canada Gazette, Part I, Volume 155, Number 52: Single-Use Plastics Prohibition Regulations**

Dear Ms. Spack:

Environmental Defence is pleased to submit the following comments on the draft regulations to prohibit certain single-use plastics.

Environmental Defence is a leading Canadian advocacy organization that works with government, industry and individuals to defend clean water, a safe climate and healthy communities. We have long-standing expertise in the *Canadian Environmental Protection Act* (CEPA), including chemicals management. We have advocated for, and participated in consultations that led to, the listing and banning of BPA in certain products for babies, microbeads in personal care products and in the listing of plastic manufactured items under Schedule 1 of CEPA.

Plastic pollution is rapidly reaching catastrophic proportions in Canada and around the world.<sup>1</sup> Plastic pollutes at all phases of its life cycle, from the extraction of the fossil fuels used to make polymers to the manufacture, use and disposal of plastic products and packaging, as well as their additives.<sup>2</sup>

---

<sup>1</sup>Persson, L. Carney Almroth, B. Collins, D. Cornell, S. de Wit, C. Diamond, M. Fantke, P. Hassellöv, M. MacLeod, M. Ryberg, M. Søgaaard Jørgensen, P. Villarrubia-Gómez, P. Wang, Z. and Zwicky Hauschild, M. "Outside the Safe Operating Space of the Planetary Boundary for Novel Entities," *Environmental Science & Technology* 2022 56 (3), 1510-1521: <https://pubs.acs.org/doi/10.1021/acs.est.1c04158>

<sup>2</sup> See CIEL, et al, *The Hidden Costs of a Plastic Planet*, 2019: <https://www.ciel.org/wp-content/uploads/2019/02/Plastic-and-Health-The-Hidden-Costs-of-a-Plastic-Planet-February-2019.pdf>

Single-use products and packaging are a particular threat to the environment. Their production consumes precious natural resources and they require expensive and often polluting treatment at the end of their short life or, worse, end up directly in the natural environment as litter.

Single-use **plastics** are even more problematic than many other materials in that they are mostly not recycled or reused, can contain toxic additives, and pose a very long-term threat to eco-systems, habitats, and wildlife once discarded. Production, use and disposal of plastics also make a significant contribution to climate change.

We are very much in favour of regulations to ban harmful single-use plastics. We make the following comments and recommendations on the draft regulations in the spirit of ensuring the bans are expedient, effective and as comprehensive as possible to deal with the threat posed by plastic pollution:

**Regulations must come into force by end of 2022:**

We know of no reason why regulations to ban the import, manufacture and sale of single-use plastics could not come into force six months after publication of the final regulation, and certainly no later than the end of 2022.

It is not acceptable to delay the coming into force of the ban on the import and manufacture of the prohibited items for 12 months and the sale for 24 months after publication. Such a delay would not serve public or environmental interest and would simply give the plastics industry additional time to profit from these harmful items.

Under the *Agreement on Technical Barriers to Trade* (WTO), it is recognized that member states may regulate to protect human, animal or plant life and/or health and the environment. They are expected to "allow **a reasonable interval** between the publication of technical regulations and their entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member" (Article 2.12, emphasis added).

A reasonable interval has been identified as "not less than six months."<sup>3</sup>

Canada's predominant trading partner for plastics is the United States. The industry is highly integrated between Canada and the US and, in fact, US industry representatives have participated in the steps of the government's consultation process leading to the publication draft regulations.

---

<sup>3</sup> <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBT/1R14.pdf&Open=True>

The regulations are consistent with the government's statements of more than two years ago.<sup>4</sup> US-based multinational corporations that operate or sell into Canada, including Walmart and, more recently, Coors, have announced elimination of single-use items contemplated by the ban, such as plastic bags and six-pack rings.

In terms of a recent, and substantively relevant example, we note that China provided six months' notice of its intention to ban certain plastic waste imports in 2017.

That Canada is now moving to ban these six single use items is certainly not a surprise to any companies selling into the Canadian market. Indeed, the government has been talking about doing exactly this since 2019. We submit that six months is reasonable notice between the posting of the final regulations and their coming into force of the bans.

**Remove the exemption for export of the banned items:**

There is no environmental rationale for continuing to allow the export of a banned material. Such an exemption does not serve public or environmental interest and would give the plastics industry the ability to continue profiting from manufacturing these harmful products in Canada and dumping them elsewhere in the world.

Canada has already developed a reputation as an exporter of unwanted plastic waste to the Global South.<sup>5</sup> Allowing the export of throwaway plastics that are banned in Canada because of known harms to the environment would be a further stain on the country's reputation and undermine global leadership to eradicate plastic pollution.

If the exemption for exports of the banned products is removed, Section 6 on record-keeping is no longer necessary. In the unfortunate event that the export exemption remains, the record-keeping requirements must be strengthened to require reporting by entities that export the banned items to the government on an annual basis. Such reports should be made on the basis of third-party audits to ensure the reliability of the data, and the aggregate data should be made available to the public. Such data will be necessary to assess the ongoing impact of the exemption and to ensure, with transparency, that banned items are not being manufactured for use in Canada.

---

<sup>4</sup> See <https://www.cbc.ca/news/politics/plastics-ban-trudeau-mckenna-1.5168828>

<sup>5</sup>See, for the most recent example: <https://ici.radio-canada.ca/recit-numerique/3600/papier-pollution-inde-recyclage>

## **Ensure the regulations do not result in increased plastic pollution or regrettable substitutions:**

The definitions in the draft regulation refer in several instances to performance criteria in an attempt to distinguish between single-use and non-single-use plastics.

We do not agree with distinguishing between single-use and reusable plastics through the use of performance criteria alone. Since the 1950s, consumers have been trained to treat plastic as disposable regardless of whether it is, in practice, washable and reusable.<sup>6</sup> Just because, in theory, an item could be washed and reused certainly does not mean that it will be.

Plastic remains artificially cheap for the companies that use it, due in part to direct subsidies and externalized costs related to its production and disposal. Cheap plastic is passed on to consumers, who assume it has low value and can be thrown away with little economic impact. That is to say that, at present, there is little economic rationale for companies to reuse or even recycle plastic.

Specifically, we are concerned that the way the regulations define a number of the subject items could well lead to the proliferation of more durable forms of plastic waste. This is a concern particularly for the treatment of bags, cutlery, straight straws and six-pack rings.

Cutlery: A plastic fork handed out with a takeout meal won't be seen as less disposable because it can withstand being submerged in 84-degree water for 15 minutes without losing its shape.

There is a small number of contexts in which plastic cutlery is not considered disposable: for example, when it is used to feed babies and young children, or for travel and camping purposes. Plastic cutlery handed out in a food court, for example, is almost certainly destined for disposal, regardless of whether it meets the performance criteria in the draft regulation.

For these reasons, we believe that **plastic cutlery should be banned**, with the following exemptions:

- available for sale only in a package at a retail store, if designed and intended for reuse.
- food service businesses may sell plastic cutlery that have a system in place to collect used items from the customer and can demonstrate that they sanitize and reuse them.

---

<sup>6</sup> See: [https://www.huffpost.com/entry/vintage-ads-plastic\\_n\\_5cdb1768e4b01e9bd3540ffa](https://www.huffpost.com/entry/vintage-ads-plastic_n_5cdb1768e4b01e9bd3540ffa)

Straight straws: the same principle noted above for cutlery applies to straws. A more durable plastic straw will be more durable plastic garbage unless there is a mechanism to collect the straw from the customer after use, and sanitize and reuse it.

Six-pack rings: we are concerned that the regulations could open the door to substituting one problematic plastic for another. We note that beverage companies currently use shrink wrap and other film to package their products and that virtually no post-consumer film and wrap is recycled in Canada.<sup>7</sup>

The regulations should **ban any use of plastic to create a package of two or more beverage containers**.

Bags: we are concerned that qualifying the banned items as “checkout” bags is unnecessarily narrow. Any bag that is used by a person to carry goods should be included in the ban. This would include produce bags, which were banned in France<sup>8</sup> at the beginning of this year.

We are also concerned that more durable plastic bags that are theoretically reusable will not be reused and will lead to plastic pollution and waste.<sup>9</sup>

We therefore recommend that the regulations **ban plastic bags designed for a person to carry goods and contain any polymer**. An exemption could be provided for bags that are:

- Designed to be used at least 100 times;
- Capable of being washed in a regular washing machine on a cycle recommended by the manufacturer for cotton or linen;
- Made from 100% recycled post-consumer plastic; **and**
- Collected back for recycling where they are sold.

If the existing proposed definition for bags is maintained, we request that it be clarified to confirm that each of the conditions listed are independent of the other and that a bag meeting any of these conditions, whether in combination or not, would be banned.

---

<sup>7</sup> Canada Plastics Pact Foundational Research & Study: Canadian plastic packaging flows, 2021: <https://plasticspact.ca/wp-content/uploads/2021/10/PPP-Foundational-Research-on-Canadian-Plastics-Packaging-Flows-May-2021-final.pdf>

<sup>8</sup> <https://www.economie.gouv.fr/cedef/interdiction-plastique-usage-unique>

<sup>9</sup> See: <https://www.theguardian.com/environment/2021/apr/18/supermarket-bags-for-life-must-cost-more-to-cut-plastic-use-urge-campaigners>

In other words, plastic film bags must be banned no matter whether they could theoretically be used to “carry 10 kg over a distance of 53 m 100 times” or survive a cotton cycle in a regular washing machine. Otherwise, as with cutlery and straws, we will surely see an explosion of more durable plastic bag pollution.<sup>10</sup>

Food service ware: the definition of food service ware must include the term **lid** or the ban is only partial.

We agree with banning food service ware that contains PVC, polystyrene, pigments made from the partial or incomplete combustion of hydrocarbons and any additive that leads to the fragmentation of the material through oxidation. In the latter case, we believe it is helpful to add the term “oxo-degradable” to explicitly include the known term for this process.

We further believe that this list, in part (c) of the definition, should be expanded to include:

- Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS): as noted by the Environmental Law Centre of the University of Victoria (ELC) in its submission on behalf of Surfrider Foundation Canada, food service ware containing PFAS is known to be a significant source of PFAS exposure.<sup>11</sup> The federal government has noted scientific evidence linking PFAS with negative health effects.<sup>12</sup> PFAS is an additive to plastics such as polypropylene and high-density polyethylene that are not subject to the food service ware ban and it is also added to paper food wrappers to make it act more like plastic. We recommend adding PFAS to the list of materials that would be banned in food service ware to eliminate existing use and ensure there is no growth in the use of this problematic additive, including through regrettable substitutions. We note that the industry group US Plastics Pact has recently listed PFAS on its list of “problematic materials” in packaging that should be eliminated.<sup>13</sup>

---

<sup>10</sup> See, for example, the experience from Connecticut, US, following a bag ban that did not cover thicker plastic film: <https://www.courant.com/news/connecticut/hc-news-ct-plastic-bag-ban-corporations-20210708-k4zrq33ti5b2hd35wz6s2qodwi-story.html>

<sup>11</sup> Ackerman, J. McRobert, D. and Sears, M. “PFAS on Food Contact Materials: Consequences for Human Health, Compost, and the Food Chain and Prospects for Regulatory Action in Canada and Beyond (2021), MJSDL: <https://www.mcgill.ca/mjsdl/article/pfas-food-contact-materials-consequences-human-health-compost-and-food-chain-and-prospects>.

<sup>12</sup> <https://www.canada.ca/en/health-canada/services/chemical-substances/other-chemical-substances-interest/per-polyfluoroalkyl-substances.html>

<sup>13</sup> See <https://usplasticspact.org/problematic-materials/>

- Phthalates: As noted by ELC, phthalates are a plastics additive that has been linked to negative health effects.<sup>14</sup> We recommend adding phthalates, including di-n-octyl phthalate (DNOP), butyl benzyl phthalate (BBP), dibutyl phthalate (DBP), di-isodecyl phthalate (DIDP), and di-isononyl phthalate (DINP), to the list of ingredients that would trigger a ban of food service ware.
- Bisphenols: while Bisphenol A (BPA) has been banned from some baby products it is still present in other food contact plastics such as polycarbonates. BPS and BBF are also found in food contact plastics. All are considered endocrine disruptors<sup>15</sup> and must be avoided as regrettable substitutions for food service ware. We recommend that they be included in the list of ingredients that would trigger a ban of food service ware.

### **Expand the list of banned items:**

The government's 2020 discussion paper, *A proposed integrated management approach to plastics*, laid out a methodology for determining which plastics should be banned.<sup>16</sup> While Environmental Defence and others did not fully support that methodology,<sup>17</sup> we do support the items contemplated by the ban in the draft regulation. Further, we believe the methodology supports the banning of plastic:

- cigarette filters
- hot and cold drink cups and lids

These items are identified as commonly littered items, are not recyclable and can be substituted.

We believe it would be reasonable to provide a longer coming-into-force period for these two items, in order to provide reasonable notice to businesses and consumers, should they be added to the regulation.

### **Add a mechanism within the regulation for annual review between now and 2030:**

The regulation must include a provision to review, with a view to expanding, the list of banned items to ensure the harm that additional plastic manufactured items pose

<sup>14</sup> Royal Society of Chemistry, publication, "Why do we worry about phthalates" (2014): [https://www.rsc.org/images/phthalates\\_tcm18-140737.pdf](https://www.rsc.org/images/phthalates_tcm18-140737.pdf)

<sup>15</sup> Min Kyong Moon, "Concern about the Safety of Bisphenol A Substitutes" (2019) 43(1):46-48 *Diabetes Metab J* 46 at 46: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6387873/>

<sup>16</sup> See <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/plastics-proposed-integrated-management-approach.html>

<sup>17</sup> See [https://environmentaldefence.ca/wp-content/uploads/2021/01/2020-12-09-ENGO\\_comments\\_Proposed-approach-to-plastic-management.pdf](https://environmentaldefence.ca/wp-content/uploads/2021/01/2020-12-09-ENGO_comments_Proposed-approach-to-plastic-management.pdf)

for the environment can be added in a timely manner. We recommend an annual review, starting 12 months after the publication of the final regulation. Where items are identified for a ban, draft amendments should be posted no later than 60 days after the start of the review period.

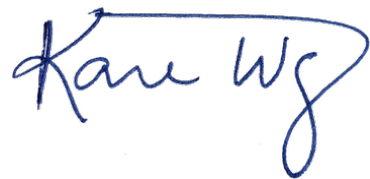
Annual reviews will allow the government and the public to consider the latest science and also to assess and address any negative outcomes, including regrettable substitutions, that arise as a result of the implementation of the bans.

Ultimately, an annual review will enable, by 2030, the removal of all manufactured plastic items from the market that harm the environment and are deemed unnecessary or where an alternative exists. This should be seen as a key tactic to achieve the goal of zero plastic waste by the end of the decade.<sup>18</sup>

### **Conclusion:**

We thank you for the opportunity to submit our comments on the draft regulations to ban certain single-use plastic items. We are supportive of using CEPA to regulate plastic manufactured items and of banning harmful single-use plastics. We hope you find our recommendations to be constructive. They are given in the spirit of strengthening measures to achieve the crucial goal of eliminating plastic pollution.

Sincerely,

A handwritten signature in blue ink that reads "Karen Wg". The signature is written in a cursive style with a large, sweeping initial 'K' and a stylized 'Wg'.

Karen Wirsig  
Program Manager, Plastics  
[kwirsig@environmentaldefence.ca](mailto:kwirsig@environmentaldefence.ca)

---

<sup>18</sup> See <https://www.canada.ca/en/environment-climate-change/services/managing-reducing-waste/reduce-plastic-waste/canada-action.html>