

Plastics Lawsuit

Media Backgrounder

On May 12, 2021, the federal government [published an order](#) adding plastic manufactured items (PMI) to the Toxic Substances List at Schedule 1 of the *Canadian Environmental Protection Act* (CEPA). The order was made on the recommendation of the Minister of Health and the Minister of the Environment and Climate Change.

On May 18, 2021, a group calling itself the Responsible Plastic Use Coalition, along with Dow Chemical Canada, Imperial Oil and Nova Chemicals Corporation, filed a lawsuit in response.

Oceana Canada and Environmental Defence, represented by Ecojustice, are intervening in the case.

What are “plastic manufactured items”?

Plastic is made from various polymers and other chemical additives derived almost exclusively from fossil fuels. The federal government has defined PMI as “any items made of plastic formed into a specific physical shape or design during manufacture, and have, for their intended use, a function or functions dependent in whole or in part on their shape or design. They can include final products, as well as components of products. All plastic manufactured items have the potential to become plastic pollution.” Examples of PMI include pellets, packaging, and furniture.

What defines a “toxic substance” under CEPA?

Under section 64 of CEPA, “toxic” is defined in terms of risks that substances pose to the environment or to human health. Based on the information provided in the [Science Assessment of Plastic Pollution](#), the Ministers were satisfied that PMI meet the criteria set out in s. 64 and, in May 2021, the federal government added PMI to the [list of toxic substances](#).

What were the findings of the government’s science assessment of plastic pollution?

The Science Assessment of Plastic Pollution was released by the federal government in October 2020. The assessment presents a thorough scientific review of the occurrence and potential impacts of plastic pollution indicating that:

- plastic pollution (in both macro and microplastic form) is everywhere in the environment;
- macroplastics can cause physical harm to animals and can negatively affect the habitat of animals;
- we need more research into the impacts of microplastics on human health, individual animals, and the environment; and
- there are a multitude of sources that contribute to plastic pollution

The assessment recommends the government take action to reduce macroplastics and microplastics that end up in the environment. This is in accordance with the precautionary principle laid out in CEPA which states 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.”

What happens when a substance is listed on Schedule 1 of CEPA?

Commented [GU1]: Add human health to this list. See section 9.3 of the science assessment.

Listing a substance on Schedule 1 empowers the Ministers responsible to make regulations to prevent or control that substance at any aspect of the substance's lifecycle from the research and development stage through manufacture, use, storage, transport and ultimate disposal or recycling.

Who are the applicants?

The Responsible Plastic Use Coalition is a group that includes NOVA Chemicals, Dow Chemical, and Imperial Oil along with 24 other business entities. NOVA Chemicals, Dow Chemical, and Imperial Oil are responsible for the bulk of plastic resin production in Canada — collectively, they are expected to produce more than 4 million tonnes of polyethylene (a key polymer used in throwaway plastic packaging) domestically in 2021 alone.

The applicants frequently lobby officials in Ottawa. The federal lobbyist registry recorded dozens of meetings between the three companies and federal officials, including Environment Minister Jonathan Wilkinson, between October 2020, when the federal government announced its intention to list plastic manufactured items as toxic, and February 2021.

Why are environmental groups intervening?

Oceana Canada and Environmental Defence, represented by Ecojustice, sought standing in the judicial review to provide the court a public interest perspective and environmental expertise on plastic pollution.

Our organizations have been closely involved in CEPA and chemicals management for many years and have advocated for federal action on plastic pollution. We believe it is both appropriate and urgent for the federal government to implement measures to mitigate the damage caused by plastics to the environment and to the health of wildlife.

Unlike the applicants (a plastics industry coalition) and the respondent (the federal government), we have neither a financial nor an institutional interest in the outcome of the case. We do not make plastic and we do not presume to regulate it. We are knowledgeable about the science and policy related to the global plastic pollution crisis and about CEPA; we can provide support to the court in those areas as it makes its determination.

Why regulate plastics under CEPA and not leave it up to the provinces, who are responsible for waste management?

Plastic pollution is more than a waste management problem: plastic generates pollution at all stages of its lifecycle and requires measures to address the conditions under which it is put on the market in Canada.

Waste management has been unable to keep up with the sheer volume and diversity of plastic items, and particularly throwaway packaging, that is increasingly put on the market - and into the environment. In fact, 91 per cent of all plastic waste generated in Canada ends up in landfills, incinerators or the natural environment directly where, in each case, it continues to pollute the environment.

Because plastic meets the test of being toxic under CEPA, the federal government is not only empowered, but required, to develop a plan to mitigate the environmental damage created by plastic pollution.

Commented [GU2]: Doesn't it also require that some actions be taken to address the threat (even if not regulation)? Do we want to add this duty to act piece? -- Ashley

What other actions has the government taken to tackle the plastic crisis?

Under Canada's G7 presidency in 2018, the federal government championed the development of the [Ocean Plastics Charter](#), which sets objectives for a more resource-efficient and lifecycle approach to plastics stewardship, on land and at sea. The Charter was adopted by Canada, France, Germany, Italy, the United Kingdom, and the European Union.

In November 2018, the federal, provincial and territorial governments approved in principle a [Canada-wide Strategy on Zero Plastic Waste](#). This puts forward a strategy for a circular economy approach to plastics and provides a framework for action in Canada.

Listing PMI on Schedule 1 of CEPA is a key step in the government's [agenda to deal with plastics](#), which over time seeks to:

- Eliminate certain sources of plastic pollution (including limiting or prohibiting certain single-use plastics).
- Strengthen domestic end-markets for recycled plastics;
- Improve the value recovery of plastic products and packaging; and
- Support innovation and the scaling up of cleaner technologies.