

## Options for regulating single-use plastics under CEPA

Regulating single-use plastics under CEPA is a two-step process. The first step requires the government to undertake an assessment to determine if single-use plastics are entering or may enter the environment in a quantity or concentration or under conditions that are toxic to the environment or human health as prescribed by section 64.

*64. For the purposes of this Part 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.*

If the assessment concludes that the single-use plastics are ‘CEPA-toxic’ they are added to Schedule 1 (section 90). Once they are added to Schedule 1, the Minister must propose a regulation or instrument respecting preventive or control actions within 18 months (section 92).

It is possible to assess and regulate a substance in about two years, as demonstrated by the microbeads timeframe. Except for substances on the Priority Substance List (PSL), CEPA does not prescribe limits on the length of time it takes to complete an assessment. After five years any person may file a notice of objection under subsection 78(1) if the Minister has not yet determined if a substance on the PSL is toxic or capable of becoming toxic.

## Regulatory Pathways and Options

### Options for Establishing Toxicity

The following three options outline ways in which the government could complete the toxicity assessment of single-use-plastics to determine if they meet the toxicity definition in section 64 for addition to schedule 1 (a prerequisite for regulation).

#### 1. “Microbead” assessment path option

The government prepares a science summary to assess the environmental and human health risks posed by single use plastics based on available information and provides a recommendation with respect to toxicity under section 64 of the Act.

#### 2. Review of decision of other jurisdictions

Where the Minister is notified that another government in Canada, or a foreign state or of a subdivision of a foreign state that is a member of the OECD has decided to prohibit or substantially restrict single use plastics, the Minister could use section 75 to determine if single use plastics are toxic or capable of becoming toxic, and make a recommendation with respect to toxicity under section 64 of the Act.

### 3. Priority Substance List option

The Minister could add single use plastics to the Priority Substance List under section 76 to assess if single use plastics are toxic or capable of becoming toxic, and make a recommendation with respect to toxicity under section 64 of the Act.

### Possible Risk Mitigation Options

The three options below outline how single-use plastics can be regulated under CEPA once a finding of toxicity to the environment has been made under section 64 (and single use plastics have been added to schedule 1) using one or more of the above options.

1. Issue regulations under section 93 of CEPA providing for measures to ensure the risk from these products is minimized (as is the case in the EU for each of these products):
  - a. Bans for Straws; Lightweight plastic bags; balloons; sticks; plastic cigarette butts; balloon sticks and stirrers;
  - b. Deposit return for all plastic bottles unless caps and lids remain attached to the container during the product's intended use stage (this measure enters in force in the EU in 2029).
  - c. Ban on polystyrene in consumers' products
2. Issue regulations under section 93 of CEPA providing for:
  - a. Collection targets for single use plastics of at least 80% (per category not by volume).
  - b. Ban the disposal of these items in landfills (due to risk of entering into the environment).













Under this scenario, provinces could not go below 80% collection targets for each item. This would mean that producers would have to replace some plastics (e.g. cigarette butts) with other materials due to the impossibility to reach those targets, set up deposit return schemes in order to achieve those collection targets.

3. Identify certain plastic materials as CEPA toxic, e.g. polystyrene (n. 6) and PVC (n. 3) and then ban the uses of these materials that are deemed to be the biggest contributors to plastic pollution. See below Nestle's announced blacklist from packaging that includes also PVC and polystyrene.

Options 1 and 3 are more clear-cut, as they involve an outright ban, or something close to it. However, with this simplicity comes risk that government will have to carve out exceptions and longer time frames to account for specific situations, such as the lack of safer alternative materials for specific uses or products.

Option 2 is more manageable in this regard, but would involve a negotiation with provinces, which oversee collection systems.




## Dirty dozen – most found items in cleanups in Canada

 1. Tiny Plastic or Foam <b>333,289</b>	 7. Plastic Bags <b>22,724</b>
 2. Cigarette Butts <b>244,734</b>	 8. Miscellaneous Packaging <b>18,465</b>
 3. Plastic Beverage Bottles <b>50,285</b>	 9. Straws & Stirrers <b>17,654</b>
 4. Food Wrappers <b>47,466</b>	 10. Foam materials <b>17,527</b>
 5. Plastic Bottle Caps <b>38,624</b>	 11. Beverage Cans <b>17,337</b>
 6. Paper Materials <b>22,877</b>	 12. Rope (1 piece = 1 meter) <b>11,365</b>



## The Negative List

We have identified several materials for which recycling schemes are unlikely to be established. These materials will no longer be used in new product packaging and we will also immediately begin phasing them out from existing packaging.

Material	Application examples
 Polyvinyl Chloride (PVC)	sleeves, labels, films, trays, printing inks, sealing layers
 Polyvinyliden Chloride (PVDC)	PVDC coated bi-oriented Polypropylene (PP) films
 Polystyrene (PS)	trays, yoghurt pots, lids for ice cream cones and coffee cups
 Expanded Polystyrene (ePS)	trays, pots, tubs, transport protections and sleeves
 Regenerated Cellulose (e.g. Natureflex)	twist wraps, pack windows
 Non-recyclable plastics/paper combinations	paper/plastic laminates, laminated paper cups

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