



Protecting Oceans and Waterways from Cigarette Butt Pollution

Prepared for:
Surfrider Foundation Canada

Authored by:
Patricia Weber, ELC Lawyer

Contributors:
Adele DesBrisay, Articled Student
Paarth Mittal, Coop Student

Researcher:
James Mager, Clinic Student

APRIL 2024

DISCLAIMER:

This material is provided for general information as a public and educational resource. We attempt to ensure the accuracy of the material provided; however, the Environmental Law Centre does not warrant the quality, accuracy or completeness of information in this document. Such information is provided "as is" without warranty or condition of any kind. The information provided in this document is not intended to be legal advice and should not be relied upon as such. Many factors unknown to us may affect the applicability of any statement that we make in this material to one's particular individual circumstances. Please seek the advice of a competent lawyer in your province, territory or jurisdiction; or contact the ELC for more complete information.

Any errors and omissions are the responsibility of the authors.

Cover:

(L) Butts collected during beach cleanup (provided by Surfrider Foundation)

(R) Overflowing oceanside butt receptacle (Holly Pattison)

Copyediting and layout: Holly Pattison, Environmental Law Centre

Copyright ©2024 The Environmental Law Centre Society. All rights reserved. Permission is hereby granted to reproduce and distribute these materials in whole or in part for educational and public interest purposes, provided such copies are disseminated at or below cost, provided that each copy bears this notice, and provided that the Environmental Law Centre is credited as the original published source.

ACKNOWLEDGEMENTS

We would like to thank Deborah Curran, Holly Pattison, Elaine MacDonald, Lucas Harris, and Lilly Woodbury for their insights and feedback.

The opinions expressed are those of the authors, and any errors and omissions are the responsibility of the authors alone.

CONTENTS

| | |
|--|-----------|
| 1. INTRODUCTION | 5 |
| Background | 6 |
| Existing or Proposed Solutions | 7 |
| Legal Options for Canada..... | 8 |
| Summary of Recommendations | 9 |
| <i>Recommendations for Federal Regulation of Cigarette Butt Filters</i> | <i>9</i> |
| <i>Recommendations for Provincial Regulation of Cigarette Butt Waste</i> | <i>9</i> |
| 2. FEDERAL JURISDICTION OVER CB WASTE | 10 |
| The Criteria and Process of Listing Substances as Toxic under CEPA | 11 |
| The Case Studies of Microplastic Beads and Single-Use Plastics | 13 |
| Benefits and Drawbacks of Listing CB Filters as Toxic under CEPA..... | 16 |
| Recommendations for Federal Regulation of CB Filters | 19 |
| 3. PROVINCIAL JURISDICTION OVER CB WASTE..... | 21 |
| British Columbia’s Approach to Waste Management | 22 |
| Extended Producer Responsibility (EPR) Programs in British Columbia | 23 |
| <i>Deposit vs Non-Deposit EPR: Case Studies on Bottles and Batteries</i> | <i>25</i> |
| <i>Benefits and Drawbacks of Creating a Deposit-Refund EPR for CB</i> | <i>26</i> |
| <i>Benefits and Drawbacks of Establishing a Non-Deposit EPR Program for CB Waste.....</i> | <i>27</i> |
| Single-Use Plastic Prohibitions in British Columbia | 28 |
| Recommendations for Provincial Regulation of CB Waste | 29 |
| 4. LOCAL GOVERNMENT JURISDICTION OVER CB WASTE IN BRITISH COLUMBIA | 30 |
| BC Local Governments’ Jurisdiction to Ban CB Filters as Single-Use Plastics | 31 |
| BC Local Governments’ Jurisdiction to Manage CB Waste through Solid Waste Collection | 32 |
| CB Receptacles, Clean Up and Fines | 33 |
| Recommendations for Local Government Regulation of CB Waste | 34 |
| 5. CONCLUSION | 35 |

1. INTRODUCTION

Recently, Canada has taken significant legal steps to reduce plastic pollution.¹ However, one area of plastic pollution has been overlooked: cigarette butt (CB) litter. Although CB litter and its plastic filters are a leading cause of consumer-based plastic pollution, especially in aquatic environments, Canada has not implemented legal measures to reduce this waste.² This report discusses the legal measures that Canada's federal and provincial governments can take to reduce or eliminate CB litter and better protect the environment.

¹ Shauna Pettipas, Meagan Bernier & Tony R. Walker, "A Canadian Policy Framework to Mitigate Plastic Marine Pollution" (2016) 68 *Marine pol'y* 117 at 119; See also the main source and Associated links in Canada, Environment and Climate Change Canada, "Government of Canada delivers on commitment to ban harmful single-use plastics," *Canada Newswire* (20 June 2022), online: <<https://www.newswire.ca/news-releases/government-of-canada-delivers-on-commitment-to-ban-harmful-single-use-plastics-883596037.html>>; Canada, Environment and Climate Change Canada, "Government of Canada moving forward with banning harmful single-use plastics," See also the main source and Associated links in Canada Newswire (21 December 2021), online: <<https://www.newswire.ca/news-releases/government-of-canada-moving-forward-with-banning-harmful-single-use-plastics-803472952.html>>.

² Chad Pawson, "Cigarette butts remain Vancouver's most littered item — and a seemingly unsolvable waste problem," *CBC* (29 October 2023), online: <<https://www.cbc.ca/news/canada/british-columbia/how-to-solve-cigarette-butt-waste-vancouver-b-c-1.7010653>> [Pawson, "Cigarette butts," *CBC*]; WWF Canada, Media Release, "Cigarette Butts Revealed Again As Top Litter Item On Canadian Shorelines" (9 May 2019), online: <<https://wwf.ca/media-releases/cigarette-butts-revealed-again-as-top-litter-item-on-canadian-shorelines/>> [WWF, "Cigarette Butts"].

BACKGROUND

CBs are the most-littered consumer waste product in Canada, and littering is the most common method of disposal.³ Littered CBs often make their way through sewer and drainage channels to bodies of water such as lakes and oceans, where they harm aquatic life.⁴ A single CB is composed of three parts: the unsmoked and partially smoked tobacco, the paper wrapping, and the plastic cigarette filter material.⁵ The smoked and unsmoked tobacco part leaches polycyclic aromatic hydrocarbons (“PAHs”), nicotine, and heavy metals.⁶ The plastic filter part contains between 12,000⁷ and 15,000 microplastic fibres that degrade into the environment.⁸ The combination of the polluting plastic and the chemicals leads the World Health Organization to estimate that a single CB product contains over 7,000 toxic chemicals.⁹ In Canada, around 8,000 tonnes of CBs are littered each year.¹⁰ The accumulation of this litter, coupled with the toxicity contained in a single CB, means that CB litter causes significant environmental harm. One report summarizes these harms by stating that CB litter is known to “kill fish, injure freshwater invertebrates, harm birds and plant life” and remain toxic for an extended period of time.¹¹

³ Emily Alfred, “Cigarette butts and the environment,” *Toronto Environmental Alliance* (27 May 2014), online (blog): <<https://www.torontoenvironment.org/cigarette-butts-and-the-environment>>; Pawson, “Cigarette butts,” *CBC*, *supra* note 2; Javad Torkashvand & Mahdi Farzadkia, “A systematic review on cigarette butt management as a hazardous waste and prevalent litter: control and recycling” (2019) 26:12 *Envtl Science & Pollution Research Intl* 11618; Surfrider Foundation, “Hold On To Your Butt!” (27 February 2012), online (blog): <<https://www.surfrider.org/news/hold-on-to-your-butt>>; WWF, “Cigarette Butts,” *supra* note 2.

⁴ Therese Nitschke et al, “Smokers’ Behaviour And The Toxicity Of Cigarette Filters To Aquatic Life: A Multidisciplinary Study” (2023) 3:1 *Microplastics and Nanoplastics* at 2.

⁵ Richard L. Barnes, “Regulating The Disposal Of Cigarette Butts As Toxic Hazardous Waste” (2011) 20: Supplement 1 *Tobacco Control* i45 at i45.

⁶ *Ibid.*

⁷ Stijn Everaert et al, “Protecting Public Health And The Environment: Towards A General Ban On Cellulose Acetate Cigarette Filters In The European Union” (2023) 11 *Frontiers in Public Health* 1 at 4 [“Everaert et al, “Protecting Public Health And The Environment””].

⁸ Dannielle S Green et al, “Time To Kick The Butt Of The Most Common Litter Item In The World: Ban Cigarette Filters” (2023) 865 *Science of The Total Environment* 161256 at 2.

⁹ World Health Organization (WHO), *Tobacco And Its Environmental Impact: An Overview* (Geneva: WHO, 2017) at 26.

¹⁰ Rothmans, Benson & Hedges Inc, “Unsmoke Canada and TerraCycle to Reduce Cigarette Waste Nationwide,” *Newswire* (1 March 2021), online: <<https://www.newswire.ca/news-releases/unsmoke-canada-and-terracycle-to-reduce-cigarette-waste-nationwide-897810226.html>>.

¹¹ Physicians for a Smoke-Free Canada (PSC), “Briefing Note: Plastic Waste From Tobacco And Vaping Products” (February 2022) at 2, online: <<https://smoke-free.ca/SUAP/2020/Single-Use-Plastics-and-Tobacco-Waste.pdf>> [PSC, “Plastic Waste”].

EXISTING OR PROPOSED SOLUTIONS

Provinces like Ontario and cities such as Vancouver and Toronto have been operating two kinds of policies to address CB litter: they educate the public against littering and run clean-up campaigns to collect the waste. However, studies show that these kinds of policies have limited impact.¹² For instance, the City of Vancouver has reported that approximately 400,000 CBs are littered each day.¹³ While this daily average has declined over the past 10 years, research indicates that this reduction is primarily attributed to the declining number of smokers rather than the effectiveness of existing policies.¹⁴ Consequently, this suggests a need for alternative strategies to further reduce CB waste. The pressing question is: What other legal measures can Canada take to reduce or eliminate CB litter and better protect the environment?

To answer this question, this report recognizes two previously proposed legal measures suggested by different levels of Canadian government. The first legal measure is a federal ban on CB filters, a measure that the federal government has recommended in a policy paper in 2019 and again considered in a discussion paper in 2021.¹⁵ However, no federal ban has been implemented. The second legal measure is that provinces can regulate CB waste through an Extended Producer Responsibility (“EPR”) program that will require the tobacco industry to ensure the safe disposal of CBs. Four local governments have asked the Province of British Columbia (“BC”) to implement this kind of legal measure. In 2016, North Vancouver City sponsored a resolution at the Union of BC Municipalities’ (UBCM) 2016 Convention to push the BC Ministry of Environment to implement a province-wide cigarette butt deposit-return program.¹⁶ The Province responded saying that cigarette butts were not currently part of their plan to expand EPR programs.¹⁷ In 2020 and 2022 respectively, the City of Vancouver and the District of West Vancouver sent letters to the BC Minister of Environment and Climate Change Strategy advocating for an EPR program that would include cigarette butts.¹⁸ In 2020, the City of Delta also sponsored a resolution at UBCM’s 2020

¹² PSC, “Plastic Waste,” *supra* note 11 at 2; Pawson, “Cigarette butts,” *CBC, supra* note 2; Maria Christina B. Araújo & Monica F. Costa, “A critical review of the issue of cigarette butt pollution in coastal environments” (2019) 172 *Envtl Research* 137; Thomas Novotny et al, “Cigarettes Butts and the Case for an Environmental Policy on Hazardous Cigarette Waste” (2009) 6:5 *Intl J of Envtl Research and Pub Health* 1691; City of Vancouver, “Cigarette litter reduction,” online: <<https://vancouver.ca/green-vancouver/cigarette-litter-reduction.aspx>> [“Vancouver, “Cigarette litter reduction””].

¹³ Pawson, “Cigarette butts,” *CBC, supra* note 2.

¹⁴ Dillon Consulting, *City of Vancouver, Street Litter Audits, 2022 Results* (Vancouver: Dillon Consulting, 2022), online: <<https://vancouver.ca/files/cov/street-litter-audit-survey-report-2022.pdf>>.

¹⁵ House of Commons, *The Last Straw: Turning the Tide On Plastic Pollution In Canada: Report of the Standing Committee on Environment and Sustainable Development* (June 2019) (Chair: John Aldag) [“House of Commons, *Turning the Tide*”]; Canada, Environment and Climate Change Canada, *A proposed integrated management approach to plastic products to prevent waste and pollution: discussion paper*, (Gatineau: Environment and Climate Change Canada, 2021) at 11 [“Environment and Climate Change Canada, *Plastic Management*”].

¹⁶ Union of BC Municipalities, *Resolutions to be Considered at the 2016 UBCM Convention*, (Victoria BC: 2016), resolution B129 at pp 174-175, online: <https://www.ubcm.ca/sites/default/files/2021-07/2016_UBCM_Resolutions.pdf>.

¹⁷ British Columbia, Ministry of Municipal Affairs and Housing, *Provincial Response to the Resolutions of the 2016 Union of British Columbia Municipalities Convention* (February 2018) at p 4, online:

<https://www.ubcm.ca/sites/default/files/2021-07/UBCM%20Provincial%20Response%20Package%202016%20ADENDUM_v02%20022018.pdf>.

¹⁸ See: Email from City Manager (Sadhu Johnson) to Mayor and Council (16 December 2020), “Re: Recent submissions to Federal and Provincial govts re: Plastics Products Mgt & Recycling Regulation Policy” at p 26, online: <<https://vancouver.ca/files/cov/12-16-2020-submissions-to-govts-re-plastics-and-recycling-regulation-policy.pdf>>; See

Convention advocating for an EPR program for cigarettes and vaping products.¹⁹ Again, the Province responded saying that cigarettes have not been identified as a priority product for EPR expansion in BC.²⁰ To date, BC has not included CBs in an EPR program.

This report explores the legal basis upon which the federal government could ban CB filters as a toxic substance. It also explores how the provinces, particularly BC, could implement an EPR program for CB waste. The report also describes how local governments could support a provincial EPR program through aiding in the collection and waste management of CB waste. While CB waste is a persistent and diffuse toxin that causes widespread harm to the environment, Canada has the legal tools necessary to substantially reduce its impact.

LEGAL OPTIONS FOR CANADA

The responsibility for CB waste lies with both the federal and provincial governments as determined by the areas of authority (or “heads of power”) outlined in the *Constitution Act, 1867*.²¹ The regulation of tobacco products and their corresponding waste falls under several heads of power, including public health, criminal law, waste management, and environmental concerns.²² This means that both the provincial and federal governments can enact laws that impact CB waste.

For the purposes of this report, we will focus on the two aspects of the shared jurisdiction of CB litter: the federal government’s criminal law power to regulate toxic substances and the province’s power to regulate harmful waste. This means that the report will focus on how the federal government can treat CB waste or CB filters as a toxic substance, and how the provinces can regulate CB as harmful waste. Correspondingly, the federal government can implement a federal ban on CB filters under the *Canadian Environmental Protection Act* (“CEPA”) and a province, like BC, can include cigarettes in an EPR program under its *Environmental Management Act* (“EMA”). This report evaluates the pros and cons of each instrument, as well as the legal risks and uncertainties they may entail. It also surveys the existing actions and demands of the BC municipalities on CB waste. The report concludes with a summary of the main findings and calls to action for the relevant authorities.

also: District of West Vancouver, *Cigarette Butt Disposal Bins/Outdoor Ashtrays Update* [Council Report, 26 May 2023] (Vancouver: District of West Vancouver, 2023), online: <<https://westvancouver.ca/media/2333>> [“West Vancouver, *Cigarette Butt Disposal Bins/Outdoor Ashtrays Update*”]; See also: Sandor Gyarmati, “Delta wants cigarette butt return program,” *Delta Optimist* (16 July 2020), online: <<https://www.delta-optimist.com/local-news/delta-wants-cigarette-butt-return-program-3124973>> [“Gyarmati, “Delta””]

¹⁹ Union of BC Municipalities, *Resolutions to be Considered at the 2020 UBCM Virtual Convention*, (Online: 2016), resolution NR54 at p 139, online: <<https://www.ubcm.ca/sites/default/files/2021-07/2020%20UBCM%20Resolutions%20Book.pdf>>.

²⁰ West Vancouver, *Cigarette Butt Disposal Bins/Outdoor Ashtrays Update*, *supra* note 18 at pp 155-156; See also: British Columbia, Ministry of Municipal Affairs and Housing, *Provincial Response to the Resolutions of the 2020 Union of British Columbia Municipalities* (September 2021) at p 66, online: <<https://www.ubcm.ca/sites/default/files/2021-09/2020%20Provincial%20Responses%20-%20Part%20Two.pdf>>.

²¹ *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, ss 91 and 92, reprinted in RSC 1985, Appendix II, No 5 [“*Constitution Act, 1867*”].

²² *Ibid*, ss 91(2), 91(27), 92(2), 92(13), and 92(16).

SUMMARY OF RECOMMENDATIONS

Groups or individuals can encourage government to reduce or eliminate CB litter through a variety of options, summarized below and explored more fully in the report.

RECOMMENDATIONS FOR FEDERAL REGULATION OF CIGARETTE BUTT FILTERS

1. For the purposes of information gathering, **file an Environmental Audit Petition to the Auditor General of Canada** to ask the Minister of Environment and Climate Change why cigarette butts were not included in *Single-Use Plastics Prevention Regulations* and about the possibility of listing them as toxic substances under CEPA. Additional questions to the Minister of Health could ask about the health implications or benefits of banning cigarette butt filters.
2. **File a request under section 76 of CEPA** that will formally request the Minister of Environment and Climate Change to consider defining cigarette butt filters as toxic and therefore creating regulations that ban or prohibit them.
3. **Put political pressure on the federal government** to amend the *Single-Use Plastics Prevention Regulations* to include cigarette butt filters as a single-use plastic.

RECOMMENDATIONS FOR PROVINCIAL REGULATION OF CIGARETTE BUTT WASTE

1. **Request that the provincial government prohibit cigarette butt filters** under the *Single-Use and Plastic Waste Prevention Regulation*. If the Province were to prohibit or substantially restrict cigarette filters, it would trigger the federal Minister of Environment and Climate Change to consider listing cigarette filters as a toxic substance in Schedule 1. The Minister could then create regulations that prohibit or restrict their use.
2. **Request that the provincial government develop an Extended Producer Responsibility program** under the *Recycling Regulation* to manage cigarette butt waste. This program can be deposit or non-deposit based.
3. **Encourage local governments to ask BC to develop an Extended Producer Responsibility program** to enable them to collect cigarette butt waste. If BC does this, then local governments can play an essential role in their collection.

2. FEDERAL JURISDICTION OVER CB WASTE

The Constitution empowers the federal government to enact legislation under its criminal law powers,²³ and the Supreme Court of Canada has confirmed that environmental protection falls within the scope of these powers.²⁴ The federal government has chosen to exercise this power through CEPA, a statute that defines toxic substances and regulates them. Under section 64 of CEPA, the federal government can define a substance as ‘toxic,’ and then add the substance to the list of toxic substances in Schedule 1.²⁵ To accord with the federal government’s criminal law powers, substances that are listed in Schedule 1 must be regulated through some form of prohibition and penalty.²⁶ This means that the legislative and regulatory schemes under CEPA must target a valid criminal law purpose, for example: to secure “[p]ublic peace, order, security, health, morality”²⁷ on matters of national concern or to protect the environment.²⁸ The federal powers are limited to the extent that the laws do not impinge on core provincial jurisdiction.

The federal government’s jurisdiction to regulate matters over human health, as seen in the *Tobacco Act*, is also based on its constitutional authority over criminal law. This power allows the federal government to create legislation that is directed at a legitimate public health concern. However, since this legislation comes under the criminal law powers, it must include a prohibition accompanied by a penal sanction. In the case of the *Tobacco Act*, the federal government is exercising its criminal law power to create legislation that addresses the public health concern of smoking, and it regulates through prohibition and penalty on different aspects of tobacco, including the manufacture, sale, labelling, and promotion of tobacco products.²⁹ Theoretically, the federal government could utilize the *Tobacco Act* to ban plastic filters or to ban cigarettes entirely.

Other countries have considered this approach. In 2022, the federal government of New Zealand proposed legislation that would have placed a generational ban on cigarettes, prohibiting the sale of tobacco and nicotine products to anyone born on or after a specific date. The intent of this legislation was to create a generation who would presumably never use cigarettes or nicotine products. However, in 2023, New Zealand’s federal government repealed this law.³⁰ If it were implemented, the eventual elimination of cigarette usage would mean that CB litter would also be eliminated. Several non-profits in Canada, including the BC Lung Foundation, have advocated for this approach.³¹ However, there is no evidence that Canada has seriously considered this legislative option.

²³ *Ibid* at s 91(27).

²⁴ *R. v. Hydro-Québec*, 1997 CanLII 318 (SCC) [“*Hydro-Québec*”].

²⁵ *Canadian Environmental Protection Act*, SC 1999, c 33, s 64 [“*CEPA*”].

²⁶ *Reference re Firearms Act (Can)*, 2000 SCC 31 at para 27.

²⁷ *Reference re Validity of Section 5(a) of the Dairy Industry Act*, [1949] SCR 1 at pp 59-50.

²⁸ *Hydro-Quebec*, *supra* note 24 at para 127.

²⁹ *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995 CanLII 64 (SCC) at para 201.

³⁰ Eva Corlett, “New Zealand scraps world-first smoking ‘generation ban’ to fund tax cuts,” *The Guardian* (27 November 2023), online: <<https://www.theguardian.com/world/2023/nov/27/new-zealand-scraps-world-first-smoking-generation-ban-to-fund-tax-cuts#:~:text=In%202022%20the%20country%20passed,health%20system%20billions%20of%20dollars>>.

³¹ BC Lung Foundation, “A Smoke-Free Generation in British Columbia” (last updated 4 March 2024), online: <<https://bclung.ca/sites/default/files/A%20Smoke-Free%20Generation%20in%20BC-%20Mar%204.pdf>>; Manatu Hauora, Ministry of Health, “Smokefree Aotearoa 2025 Action Plan” (last updated 22 August 2023), online:

The federal government has actively considered using its criminal law powers to address environmental concerns relating to CB litter. In this context, it has published two policy papers proposing a potential ban on CB filters under CEPA.³² This report delves into two possible approaches for implementing such a ban: creating a new listing for CB filters as a toxic substance or incorporating CB into an existing regulation.

THE CRITERIA AND PROCESS OF LISTING SUBSTANCES AS TOXIC UNDER CEPA

This section outlines one way that the federal government could reduce CB waste by classifying CB filters as toxic and adding them to Schedule 1 of CEPA. This process, known as ‘creating a new listing,’ allows the federal government to subsequently regulate the distribution of CB filters within the Canadian market, likely by imposing outright prohibition.

The recently enacted Bill S-5, *Strengthening Environmental Protection for a Healthier Canada Act* (the “Amendments”), came into force on June 13, 2023. These Amendments introduced several significant changes to CEPA.³³ Notably, CEPA’s preamble and section on administrative duties now recognizes that Canadians have a right to a healthy environment.³⁴ Additionally, the Amendments direct Ministers to apply the precautionary principle when assessing whether a substance qualifies as toxic. This means that preventative actions will be taken even in cases of uncertainty about the risks of a substance.³⁵

Furthermore, the Amendments require Ministers to consider the impact of substances on vulnerable populations or environments, as well as the cumulative effects on human health and the environment.³⁶ These alterations to CEPA hold the potential to significantly influence how Ministers define toxic substances and establish new listings. In the subsequent case studies, we delve deeper into the potential impacts these Amendments have on future new listings. But first, let’s outline the procedure for creating a new listing under the Amendments.

To create a new listing, a substance will have to meet the definition of ‘toxic’ under CEPA. Section 64 defines a substance as toxic if it is entering or may enter the environment in a quantity or concentration or under conditions that: have or may have an immediate or long-term harmful effect on the environment or its biological diversity; constitute or may constitute a danger to the environment on which life depends; or, constitute or may constitute a danger in Canada to human life or health.³⁷ To trigger the Ministers even considering if a substance meets this definition, one

<https://www.health.govt.nz/our-work/preventative-health-wellness/smokefree-2025/smokefree-aotearoa-2025-action-plan> [“Hauora, “Smokefree Aotearoa””].

³² House of Commons, *Turning the Tide*, *supra* note 15; Environment and Climate Change Canada, *Plastic Management*, *supra* note 15.

³³ Bill S-5, *An Act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drugs Act and to repeal the Perfluorooctane Sulfonate Virtual Elimination Act*, 1st Sess, 44th Parl, 2023, cl 2(1) (as passed by the House of Commons 13 June 2023) [“Bill S-5”].

³⁴ CEPA, *supra* note 25 at preamble, ss 2(a.2), 5.1, 44(3.1), 287; See also: *Ibid*, ss 2(1), 5, 7.

³⁵ *Ibid* at s 76.1.

³⁶ *Ibid*.

³⁷ *Ibid* at s 64.

of the following two things must occur. First, the Minister learns that a substance has been prohibited or substantially restricted by another jurisdiction, either a Canadian province or a member state of the Organization for Economic Co-operation and Development (“OECD”).³⁸ Second, the Ministers can commission an assessment.³⁹

The Ministers have discretion to decide if a substance warrants an assessment under CEPA. Presumably, a Minister would make this decision when there is emerging science or monitoring efforts that indicate the toxicity of a substance.⁴⁰ Additionally, the Amendments introduced an alternative trigger for ministerial discretion. Now, citizens or groups of citizens can submit requests to the Ministers, urging them to assess a substance’s toxicity or potential for toxicity.⁴¹ Upon receiving such requests, the Ministers must consider them and then decide whether to include the substance in the assessment plan under section 73 of CEPA.⁴²

After a substance is determined to require an assessment, the Ministers must add the substance to their list of priority substances for an assessment of toxicity. This list must include timelines for assessment; initiatives to assess, control, or manage risks to human health or the environment; and initiatives to promote the development and incorporation of scientifically justified alternative methods and strategies.⁴³ Then, the Ministers must publish the proposed plan in the Environmental Registry and give notice of this plan in the *Canada Gazette*.⁴⁴ A 60-day public consultation period follows, and after that period, the Ministers then publish the finalized plan in the *Canadian Gazette*.⁴⁵

The plan that the Ministers develop should include a proposal for what actions the government should take on the substance. The actions can be 1) taking no further action, 2) adding the substance to the list of potentially toxic substances in section 75.1, 3) recommending that the substance be added to Part 1 of the list of toxic substances in Schedule 1, or 4) recommending that the substance be added to Part 2 of the list of toxic substances in Schedule 1.⁴⁶

When the Ministers recommend that a substance be added to Schedule 1, it means that the Ministers are recommending that the substance meets the definition of toxic and therefore should be added to the list of toxic substances, which is set out in Schedule 1. If the Ministers make this recommendation, they must first publish this recommendation in the *Canada Gazette* and then wait for a comment period.⁴⁷ After considering the comments, the Ministers must publish an updated recommendation in the *Canada Gazette*.⁴⁸ At this point, they may recommend to the Governor in Council (GiC) that they make an order adding the substance to Schedule 1, and they must also make a recommendation regarding whether the substance should be added to Part 1 or

³⁸ *Ibid* at s 75(3).

³⁹ *Strengthening Environmental Protection for a Healthier Canada Act, SC 2023, c 12* at s 68.

⁴⁰ Note: There is no current explanatory document on the legislative scheme for controlling toxic substances. This, however, is in line with how the Act worked prior to the Amendments. See *CEPA, supra* note 25 at s 64.

⁴¹ *Ibid* at s 76(1).

⁴² *Ibid* at s 76(2).

⁴³ *Ibid* at s 77(1).

⁴⁴ *Ibid* at s 77(2).

⁴⁵ *Ibid* at ss 77(5)-77(6).

⁴⁶ *Ibid* at s 77(2).

⁴⁷ *Ibid* at ss 77(5)-77(6).

⁴⁸ *Ibid* at s 90(1.1).

2 of Schedule 1.⁴⁹ Substances listed in Part 1 include substances that pose the highest risk to human health or the environment, requiring the ministers to prioritize making total, partial or conditional bans.⁵⁰ Substances listed in Part 2 of Schedule 1 are given priority for pollution prevention actions (which can include prohibitions).

Finally, the GiC can order a substance to Schedule 1, making it a toxic substance and allowing the government to develop regulations over the substance. The GiC may do this if they are satisfied that the substance is toxic, and it receives a recommendation from the Ministers.⁵¹ It does not appear that the GiC needs to be prompted to make this listing by first having to conduct an assessment or having to review a decision of another jurisdiction.

This process of creating a new listing for a toxic substance under CEPA has traditionally been reserved for chemicals. This usually means that the federal government only lists the name of chemical compounds or elements, and often includes a molecular formulation in the Schedule 1 listing.⁵² Previous exceptions to this have been specific and narrow in scope – for example, several listings involve waste products that contain chemical compounds or elements as a result of industrial or remediation processes.⁵³

The historic focus on specific chemical compounds or elements changed under the old version of CEPA, the one in force prior to the Amendments, when the federal government created two new listings: plastic microbeads and plastic manufactured items. These listings were novel because they listed entire manufactured products as toxic substances, and not just their chemicals. This is the same approach that a federal ban on CB filters would use. This approach carries legal risks and uncertainties – but also presents a real possibility that CB filters could be banned. To understand this complexity, this memo will first examine the legal steps that the federal government took to list plastic microbeads and plastic manufactured items. Then, it will discuss the implications of these cases on future listings, particularly CB filters.

THE CASE STUDIES OF MICROPLASTIC BEADS AND PLASTIC MANUFACTURED ITEMS

In a 2019 discussion paper from the Minister of Environment and Climate Change Canada, the authors suggest that the federal government could use CEPA to help reduce plastic pollution by listing plastic manufactured products as toxic substances.⁵⁴ An example of this first happened in

⁴⁹ *Ibid* at s 90(1).

⁵⁰ *Ibid* at s 90(1.1).

⁵¹ *Ibid* at s. 90(1).

⁵² *Ibid* at Schedule 1.

⁵³ See for example: “Chlorinated wastewater effluents” (listing 28 of Part 2 of Schedule 1), “Effluents from pulp mills using bleaching” (listing 34 of Part 2 of Schedule 1); “Particulate matter containing metals that is released in emissions from copper smelters or refineries, or from both” (listing 61 of Part 2 of Schedule 1), and “Particulate matter containing metals that is released in emissions from zinc plants” (listing 62 of Part 2 of Schedule 1). In *CEPA*, *supra* note 25 at Schedule 1.

⁵⁴ Canada, Environment and Climate Change Canada, *A Proposed Integrated Management Approach to Plastic Products to Prevent Waste and Pollution: Discussion Paper*, (Gatineau: Environment and Climate Change Canada, 2019) at 4-5 [“Environment and Climate Change Canada, *Proposed Integrated Management*”].

2016, with the creation of the new listing of “plastic microbeads that are \leq 5mm in size” and related regulations,⁵⁵ and again in 2021 with the new listing of “plastic manufactured items” and the related *Single-Use Plastics Prevention Regulations* (SUPPR).⁵⁶ These cases show how the federal government can use CEPA to ban a manufactured product that is harmful to the environment, but they also reveal some legal challenges and uncertainties.

The first case is the listing of microplastic beads as toxic substances under CEPA in 2016.⁵⁷ Microplastic beads are small pieces of plastic that can be used as an additive in personal care products, such as toothpaste, facial cleansers, and body scrubs, for exfoliating or cleansing purposes. However, scientific studies were indicating that these beads end up in the environment, especially in water, where they can harm aquatic life and accumulate toxins.⁵⁸ In response, the federal government sought to ban plastic microbeads in cosmetic and toiletry products.⁵⁹ To implement the ban, the federal government created a new listing for these products, but used a different process that departs from the method described above.

On March 24, 2015, the federal government enacted legislation that authorized the Minister to take immediate measures to add microbeads to the List of Toxic Substances in Schedule 1 of CEPA.⁶⁰ To support this legislation, the government cited a Science Summary that surveyed 130 publications on the fate and effects of microplastics.⁶¹ Following the vote, plastic microbeads were added to Schedule 1 of CEPA.

This enabled the Minister of Environment to create regulations on this newly listed toxic substance. These became the *Microbeads in Toiletries Regulations*, and for them to come into effect, the proposed regulations were published in the *Canada Gazette* and then followed by a public consultation period. After this period, the regulations came into force, and prohibited the manufacture, import, and sale of toiletries or cosmetics that use plastic microbeads to exfoliate or cleanse.⁶² It is important to note that the evidence upon which the federal government relied for the microplastics listing and regulatory ban emphasized the harmful effects the discarded products have on aquatic habitats and waters.

⁵⁵ *Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999*, SOR/2016-150 [“Order adding Microbeads”].

⁵⁶ *Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999*, SOR/2021-86 [“Order adding PMI”].

⁵⁷ Order adding Microbeads, *supra* note 56.

⁵⁸ Saba Aziz, “Are microplastics harmful? Health Canada funds research on potential risks,” *Global News* (2 February 2024), online: <<https://globalnews.ca/news/10268237/microplastic-risks-health-canada-research/>>; Mitchell Consky, “Scientists discover microplastics in aquatic life, human blood, breast milk,” *CTV News* (5 December 2022), online: <<https://www.ctvnews.ca/health/scientists-discover-microplastics-in-aquatic-life-human-blood-breast-milk-1.6180489>>.

⁵⁹ Canada, Health Canada, “Microbeads” (4 November 2016), online: <<https://www.canada.ca/en/health-canada/services/chemical-substances/fact-sheets/chemicals-glance/microbeads.html>>.

⁶⁰ *i.e.*, plastic microbeads equal to or less than 5 mm in size are “entering the environment in a quantity or concentration or under conditions that have or may have an immediate or long-term harmful effect on the environment or its biological diversity.” See *Microbeads in Toiletries Regulations*, SOR/2017-111, “Background” section under “Regulatory Impact Analysis Statement.”

⁶¹ Canada, Environment and Climate Change Canada, *Microbeads – A Science Summary*, (Ottawa: Environment and Climate Change Canada, 2015), online: <https://www.ec.gc.ca/ese-ees/ADDA4C5F-F397-48D5-AD17-63F989EBD0E5/Microbeads_Science%20Summary_EN.pdf>.

⁶² Canada, Environment and Climate Change Canada, “Manufacturing, Importing or Selling Toiletries” (20 June 2019), online: <<https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/publications/manufacture-import-sale-microbeads-toiletries.html>>.

In 2020, the federal government’s classification of “plastic manufactured items” (PMIs) as a toxic substance marked the second instance of creating a new listing for a plastic product. This listing named plastic manufactured items as toxic substances, and the corresponding *Single-Use Plastics Prohibition Regulation* (SUPPR) particularizes six items: checkout bags, cutlery, foodservice ware made from hard-to-recycle plastics, ring carriers, stir sticks, and straws. The SUPPR prohibits the manufacture, import and sale of these items⁶³ and leaves open the possibility that new items could be added to the *Regulation*.

The federal government initially listed the PMIs in Schedule 1 through an Order in Council on April 23, 2021.⁶⁴ As part of the listing process, the federal government released the *Draft Science Assessment of Plastic Pollution* in the *Canada Gazette* in February 2020 for a 90-day public comment period.⁶⁵ After receiving and addressing comments, they published the *Science Assessment of Plastic Pollution* and a copy of the proposed *Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999* in the *Gazette* in October 2020.⁶⁶ The Science Assessment provided evidence of the toxicity of micro and macro plastics, including impacts on environmental health.⁶⁷

When the GiC posted a copy of the proposed Order in Council adding PMIs to Schedule 1, industry stakeholders made a considerable number of objections.⁶⁸ The Minister of Environment denied requests to form a Board of Review to inquire about the nature and extent of PMIs’ environmental harm⁶⁹ and proceeded to post the final Order adding PMI to Schedule 1 in the *Canada Gazette* on April 23, 2021.⁷⁰ Shortly after, the Responsible Plastic Use Coalition, Dow Chemical Canada, Nova Chemicals Corporation, and Imperial Oil (“*Responsible Plastic*”) filed an application for judicial review of the federal government’s decision to add PMI to Schedule 1.⁷¹

After the parties filed the initial submissions in the *Responsible Plastic* case, the federal government enacted the SUPPR, which sets out a phasing-out timeline for each of the six items the SUPPR identifies.⁷² The SUPPR anticipates that by the end of 2025, the federal government will also prohibit the manufacture and import for the purposes of export of all six categories of single-use plastics, making Canada the first among peer jurisdictions to do so internationally.⁷³ Approximately one year after passing the SUPPR, the federal government enacted the Amendments. The Amendments repealed the list of toxic substances in Schedule 1 and re-enacted

⁶³ SOR/2022-138, ss 1, 3-6 [“*Single-use Plastics Prohibition Regulations*”].

⁶⁴ Order adding PMI, *supra* note 56.

⁶⁵ Publication of the draft science assessment of plastic pollution (Department of the Environment, Department of Health), (2020) C Gaz I, 172 (CEPA) [“*Plastics Science Assessment*”].

⁶⁶ Order adding PMI, *supra* note 56.

⁶⁷ *Plastics Science Assessment*, *supra* note 65.

⁶⁸ Notice of objection and request for board of review in relation to proposed order adding plastic manufactured items to Schedule 1 of the *Canadian Environmental Protection Act, 1999*, (2020) C Gaz I, online:

<<https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/notices-objection.html#oct2020>>.

⁶⁹ *Ibid.*

⁷⁰ Order adding PMI, *supra* note 56.

⁷¹ *Responsible Plastic Use Coalition v. Canada (Environment and Climate Change)*, 2022 FC 1511 [“*Challenge to PMI Listing*”]

⁷² SOR/2022-138 [“*Single-use Plastics Prohibition Regulations*”].

⁷³ Canada, Environment and Climate Change Canada, “*Single-use Plastics Prohibition Regulations – Overview*” (18 April 2023), online: <<https://www.canada.ca/en/environment-climate-change/services/managing-reducing-waste/reduce-plastic-waste/single-use-plastic-overview.html>>.

it with all the same substances but divided them into two parts and with a new name (this is the current process of a new listing, described above).

In November 2023, the Federal Court released its decision in the *Responsible Plastics* case.⁷⁴ Justice Furlanette held that the PMI listing was unconstitutional because it included items with “no reasonable apprehension of environmental harm,” and was therefore outside of the federal government’s jurisdiction and unlawfully impinged on provincial jurisdiction.⁷⁵ Despite quashing the Order, Justice Furlanette refused to rule on the constitutionality of listing PMI through using the Amendments, as this argument was not included in Responsible Plastics’ initial submissions.⁷⁶ As such, PMIs remain on Schedule 1 to CEPA.⁷⁷ After the FC released their decision, Canada filed an appeal and asked the federal court of appeal (FCA) to stay the judgement pending the outcome of the appeal.⁷⁸ In January 2024, the FCA granted the stay, citing potential confusion for businesses complying with the SUPPR and emphasizing the irreparable harm to its roll-out, which they deemed contrary to the public interest.⁷⁹

BENEFITS AND DRAWBACKS OF LISTING CB FILTERS AS TOXIC UNDER CEPA

To reduce the amount of CB waste in Canada, the federal government has two options: it can classify CB filters as a new toxic substance and regulate them accordingly, or it can revise the SUPPR to categorize CB filters as a single-use plastic. Both legal paths come with their own set of risks and opportunities. However, forecasting their potential outcomes is complex due to the current Responsible Plastic case. While the recent amendments to CEPA have broadened its functions and authority, the decision from a future FCA appeal or a future appeal from the Supreme Court of Canada, may significantly influence how these amendments are interpreted. This influence may restrict the federal government’s ability to use CEPA to include plastic manufactured items as toxic substances. However, it is also possible that a court ruling in these cases could support the inclusion of plastic manufactured items as toxic substances.

The difficulty in predicting the outcome arises partly because, in its decision on the previous regulations, the FC abstained from ruling on the validity of the new classification of plastic manufactured items under the amended CEPA. Moreover, it appears that the federal

⁷⁴ Challenge to PMI Listing, *supra* note 71.

⁷⁵ *Ibid* at para 184.

⁷⁶ *Ibid* at paras 167-186.

⁷⁷ *Ibid* at para 204.

⁷⁸ Talia Gordner, Julia Loney, and Martin Thiboutot, “Plan for the Ban: Canada’s Single-use Plastics Prohibition Regulations Remain in Effect Pending the Federal Court of Appeal Decision” (*McMillan LLP*: 6 February 2024), online: <<https://mcmillan.ca/insights/plan-for-the-ban-canadas-single-use-plastics-prohibition-regulations-remain-in-effect-pending-the-federal-court-of-appeal-decision/>>.

⁷⁹ *Canada (Attorney General) v Responsible Plastic Use Coalition*, 2024 FCA 18 at para 28; See also: Environment and Climate Change Canada, News Release, “Statement by the Honourable Steven Guilbeault, Minister of Environment and Climate Change, on appealing the recent Federal Court decision and Canada’s commitment to end plastic pollution” (12 December 2023), online: <<https://www.canada.ca/en/environment-climate-change/news/2023/12/statement-by-the-honourable-steven-guilbeault-minister-of-environment-and-climate-change-on-appealing-the-recent-federal-court-decision-and-canadas.html>>; See also: *Ibid*.

government's initial inclusion of six items in the SUPPR was a strategic move, anticipating the addition of more items in the future. Policy documents released by the federal government in 2019 and 2021 consistently mention other single-use plastics that could be added to the SUPPR, including CB filters.⁸⁰ This has led some groups, like Greenpeace Canada, to lobby the federal government to “#ExpandtheBan” by adding more items to the SUPPR, like CB filters.⁸¹ It is possible that the federal government is refraining from this action because the Responsible Plastic case is ongoing.

This uncertainty aside, the case studies of microbeads and plastic manufactured items do offer some insights about a possible CB filter listing and ban. First, the federal government could list CB filters as a new listing and then create regulations that impose a ban. Arguably, this process would have more steps than adding CB filters to the SUPPR. However, the Amendments have created a framework that might support this new listing.

In one respect, if the federal government were to create a new listing for CB filters, this might resemble the government's microbead listing rather than the plastic manufactured items listing. This is because CB filters are part of a type of product (cigarettes), leading to a more focused listing. An expert in the *Responsible Plastic* case argued that the microbeads listing had a narrow focus, meaning that the listing was concerned about one part of certain personal care products, rather than entire products (like the single-use plastic bans).⁸² This distinction may be used by the government if it were to list CB filters as a new listing, making the listing possibly more legally workable.

This option is not without legal risks. Unlike plastic microbeads, filters that contain plastic fibers are in most cigarette products. Further, filters are marketed as reducing the harm to the consumers, and while this may or may not be true,⁸³ the tobacco industry reports that 90% of cigarettes are sold with filters.⁸⁴ This indicates that the use of the plastic CB filters is more widespread than that of cosmetic toiletries with microbeads. Further, microbeads were listed and banned after a significant decrease in consumer demand, which is likely a factor in why the ban has not been challenged.⁸⁵ A similar decrease in demand has not arisen for cigarettes with filters. Thus, creating a new listing for CB filters may bring legal challenges that the microbead listing did not attract. Finally, since CB filters are significantly more common in the cigarette products, there can also be a legal case that a federal listing is overbroad, impinging on provincial jurisdiction, and therefore unconstitutional. This is what the Federal Court found in the government's listing of plastic manufactured items.

A potentially easier path is for the federal government to amend the SUPPR to include CB filters. The benefit of this approach is that it requires fewer steps than creating a new listing, and it has the advantage of having already been considered by the federal government. Prior to creating the

⁸⁰ See: House of Commons, *Turning the Tide*, *supra* note 15; See also: Environment and Climate Change Canada, *Plastic Management*, *supra* note 15.

⁸¹ Greenpeace, “Tell Canada to expand the ban on single-use plastics” (2024), online: <<https://www.greenpeace.org/canada/en/act/expand-the-single-use-plastics-ban/>>.

⁸² Challenge to PMI Listing, *supra* note 711 at para 92.

⁸³ World Health Organization (WHO), *Tobacco: Poisoning Our Planet* (Geneva: WHO, 2022) at 8.

⁸⁴ Everaert et al, “Protecting Public Health And The Environment,” *supra* note 7 at 3.

⁸⁵ Peter Dauvergne, “The Power of Environmental Norms: Marine Plastic Pollution and the Politics of Microbeads” (2018) 27:4 *Envtl Politics* 579.

SUPPR, the federal government issued a discussion paper that contemplated possible items to include in the SUPPR and CB filters are listed.⁸⁶ It is possible that the federal government is waiting for the *Responsible Plastics* appeal (possibly appeals) to be decided before adding any new items to the SUPPR. If the courts find that the plastic manufactured item listing is legally sound, then it would provide a solid foundation for the government to include CB filters under the SUPPR, aligning with the expanded purpose and mandate of CEPA. In particular, adding CB filters to the SUPPR would fit with CEPA's directive to instruct Ministers to identify toxic substances using the precautionary principle and consider their cumulative effects.⁸⁷ Moreover, CEPA now guarantees Canadians the right to a healthy environment. Given these changes, there is a strong argument for the federal government to extend the SUPPR to encompass CB filters.

However, attention needs to be paid to the health and socio-economic factors that the government may consider with respect to banning CB filters. It is beyond the scope of this report to explore this fully, but such a ban stands to impact vulnerable and marginalized communities, and this impact is discussed a bit more in the municipal section of this report.⁸⁸ Further, the Amendments direct the Minister to implement CEPA in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).⁸⁹ The Preamble mentions that CEPA must be implemented to honour Indigenous Nations' free, prior, and informed consent on actions that the government takes, and the government will recognize the role of Indigenous knowledge in decision making related to the protection of the environment and human health.⁹⁰ Accordingly, a federal ban on CB filters needs to recognize Indigenous authority. Studies indicate that Indigenous people consume cigarettes at higher than average rates in Canada, so a ban on filters would have a greater effect on Indigenous communities.⁹¹ Scholars have also written about the importance of tobacco to some First Nations cultures, so imposing a ban without consultation with First Nations would appear to conflict with the Preamble's directives and potentially infringe on Indigenous authority.⁹² To address this, the government could work in collaboration with Indigenous Nations or through national organizations like the Assembly of First Nations.

⁸⁶ Environment and Climate Change Canada, *Plastic Management*, *supra* note 15.

⁸⁷ *CEPA*, *supra* note 25 at s 76.1.

⁸⁸ Ann Pederson et al, "Smoking on the margins: a comprehensive analysis of a municipal outdoor smoke-free policy" (2016) 16:1 BMC Pub Health 852 ["Pederson et al, "Smoking on the margins"]; Hannah R Farimond & Helene Joffe, "Pollution, Peril and Poverty: A British Study of the Stigmatization of Smokers" (2006) 16:6 J of Community & Applied Soc Psychology 481 ["Farimond & Joffe, "Pollution, Peril and Poverty"].

⁸⁹ *CEPA*, *supra* note 25, "Preamble."

⁹⁰ *Ibid.*

⁹¹ Juliet P Lee et al, "Off-White: decentring Whiteness in tobacco science" (2023) 32 Tobacco Control 537; Kelley Lee, Julia Smith & Sheryl Thompson, "Engaging Indigenous peoples in research on commercial tobacco control: a scoping review" (2020) 16:4 AlterNative: An Intl J of Indigenous Peoples 332.

⁹² Patricia Nez Henderson et al, "Decolonization of Tobacco in Indigenous Communities of Turtle Island (North America)" (2022) 24:2 Nicotine & tobacco research 289; Chippewas of the Thames First Nation, *Traditional Use of Tobacco among Indigenous Peoples of North America*, (Literature Review) by Dr. Tonio Sadik (Muncey: Chippewas of the Thames First Nation, 2014).

RECOMMENDATIONS FOR FEDERAL REGULATION OF CB FILTERS

There are few different options that Surfrider could consider encouraging federal action. First, the group could file a request under section 76 of CEPA that the Minister of Environment and Climate Change list CB filters as toxic substances. This option was mentioned briefly above, and after filing the request, the Ministers must assess a substance to determine if it is toxic or “capable of becoming toxic.”⁹³ The request must be made in writing⁹⁴ and in a form specified by the Minister.⁹⁵ Once a request is made, the Minister must consider the request and issue a decision.⁹⁶ Within 90 days of receiving the request, the Minister needs to inform the party about their decision or inform the party about how they intend to deal with the request.⁹⁷ If CB filters were added, the federal government would then have to pass regulations prohibiting them. The advantage to creating a new listing is that it enables the Ministers to use the expanded mandates of CEPA under the Amendments to justify the new listing that can do cumulative environmental harm to Canadians. The creation of this new listing may not be subject to the same vulnerabilities and legal challenge that CB filters regulated under SUPPR may be. However, this avenue could be slow because it would simply add CB filters to the priority plan, at which point, they become one of the many substances cued for assessment. There is no timeline attached to the assessment unless spelled out in the priority plan and the Ministers do not have to publish the priority plan until June 2025 (2 years after Royal Assent) of Bill S-5.

The other possibility is that Surfrider could lobby or advocate that the federal government simply expand SUPPR to include CB filters. This option may seem promising because the federal government has shown some willingness and commitment to address the problem of plastic pollution, especially persistent and accumulative plastics that harm the environment and human health. This approach appears to be within the discretion of the Minister and has the benefit of being a potentially faster process than creating a new listing for CB filters. However, this avenue may also take time. Given that the SUPPR was passed pursuant to the listing of plastic manufactured items, which is currently being challenged, the federal government is unlikely to add to the SUPPR before the challenge to the plastic manufactured item listing has been resolved.

However, there are potential difficulties with each option. Banning CB filters through either avenue could raise concerns from the Minister of Health, who is responsible for regulating tobacco products under the *Tobacco Act* and may have reservations about the impact of banning CB filters

⁹³ CEPA, *supra* note 25 at 2 (1)(k).

⁹⁴ *Ibid* at s 76(1).

⁹⁵ *Ibid* at s 76(3). Note that the specific form is not yet available. Ecojustice has submitted two requests using a letter. See for example: Email from Ecojustice (Bronwyn Roe, Anna McIntosh, and Dr Elaine MacDonald) to The Hon. Steven Guilbeault (11 March 2024), “Re: Request for assessment of naphthenic acids founds in oil-sand processed water (“OSPW NAs”) pursuant to s. 76(1) of the Canadian Environmental Protection Act, 1999”, online: <<https://ecojustice.ca/wp-content/uploads/2024/03/2024-03-11-Letter-to-Minister-Guilbeault-re-s.-76-request-to-assess-OSPW-NAs.pdf>>; See also: Email from Ecojustice (Lindsay Beck and Daniel Cheater) to the Hon. Steven Guilbeault (6 February 2024), “Re: Request to assess 6PPD under s 76 of the Canadian Environmental Protection Act, 1999”, online: <<https://ecojustice.ca/wp-content/uploads/2024/02/2024-02-06-Request-to-Assess-6PPD-under-Section-76-of-CEPA.pdf>>.

⁹⁶ *Ibid* at s 76(2).

⁹⁷ *Ibid* at s 76(2.1).

on the health and safety of tobacco users. The ban could also raise concerns from the Minister of Indigenous Affairs, such as on how they would implement it in accordance with UNDRIP. Finally, Canadian residents and industry may respond poorly to a proposed ban on CB filters and such a proposal may face some opposition and obstacles from the government, the industry, or the public.

To find out more about the federal government's position and intentions regarding CB filters, an organization could file an Environmental Audit Petition to the Auditor General of Canada. This is a formal request that asks specific questions to one or more federal ministers about environmental issues. The petition must follow a certain format and meet certain criteria. The Ministers must respond to the petition within 120 days.⁹⁸ By filing a petition, an organization could ask the Minister of Environment and Climate Change about the reasons for not including CB filters in SUPPR, and the possibility of listing them as toxic substances under CEPA. The organization could also ask the Minister of Health about the health implications or benefits of banning CB filters.

However, filing a petition does not guarantee that the Ministers will provide satisfactory or clear answers, or that they will take any action based on the petition. The petition is only a tool to obtain information and to draw attention to an issue. It does not create any legal obligations or consequences for the Ministers or the government. Therefore, this option may not be very effective or efficient in achieving the goal of banning or reducing CB filters.

⁹⁸ Office of the Auditor General of Canada, "Environmental Petitions," online: <[https://www.oag-bvg.gc.ca/internet/English/pet fs e 919.html](https://www.oag-bvg.gc.ca/internet/English/pet_fs_e_919.html)>.

3. PROVINCIAL JURISDICTION OVER CB WASTE

In Canada, the provinces have jurisdiction over a wide range of environmental concerns, stemming from their authority over municipal institutions;⁹⁹ property and civil rights,¹⁰⁰ and matters of a local or private nature.¹⁰¹ Because it is primarily a localised concern, waste management is considered an area of provincial jurisdiction.¹⁰² This jurisdiction over waste management is what grounds the provinces' ability to create Extended Producer Responsibility (EPR) schemes and ban single-use plastics.

The focus of this part is on the Province of BC's waste management laws, regulations, and policies. While many Canadian provinces are transitioning toward full EPR programs,¹⁰³ BC was the first province to adopt a full EPR scheme for packaging and printed paper, electronics and electrical products, mercury-containing products, household hazardous and special wastes, and automotive products.¹⁰⁴ Full EPR means that producers are responsible for managing the entire financial and physical impact of their products at its end-of-life.¹⁰⁵ Other provinces either have schemes partially funded by municipalities and consumers¹⁰⁶ or have not yet implemented EPR for certain products.¹⁰⁷ Similarly, several provinces (including Manitoba, Newfoundland and Labrador, Prince Edward Island, Nova Scotia, and the Yukon) have regulations on plastic checkout bags with varying restrictions.¹⁰⁸ Other provinces have the same jurisdiction over waste management, but their regulatory schemes on EPR and single-use plastics appear to be generally less robust.¹⁰⁹

⁹⁹ *Constitution Act, 1867*, *supra* note 21 at s 92(8).

¹⁰⁰ *Ibid* at s 92 (13).

¹⁰¹ *Ibid* at s 92 (16).

¹⁰² Parliamentary Information and Research Service, Economics, Resources and International Affairs Division, *Federal and Provincial Jurisdiction to Regulate Environmental Issues*, (Background Paper) by Penny Becklumb, Publication No. 2013-86-E (Ottawa: Library of Parliament, 29 October 2019) at 8, online:

<https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2013-86-e.pdf>.

¹⁰³ Jonathan Arnold, "EXTENDED PRODUCER RESPONSIBILITY IN CANADA" (2019) Smart Prosperity Institute, Clean Economy Working Paper Series, Working Paper No 19-06 at 2, online:

<https://institute.smartprosperity.ca/sites/default/files/epiprogramsincanadaresearchpaper.pdf> ["Arnold, "Extended Producer Responsibility""].

¹⁰⁴ *Ibid* at 4.

¹⁰⁵ *Ibid* at 3; See also Government of Canada, "Introduction to extended producer responsibility," online:

<https://www.canada.ca/en/environment-climate-change/services/managing-reducing-waste/overview-extended-producer-responsibility/introduction.html>.

¹⁰⁶ Avalon Diggle & Tony R. Walker, "Implementation of harmonized Extended Producer Responsibility strategies to incentivize recovery of single-use plastic packaging waste in Canada" (2020) 110 *Waste Management (Elmsford)* 20.

¹⁰⁷ Arnold, "Extended Producer Responsibility," *supra* note 103 at 4.

¹⁰⁸ David Baxter, "Will single-use plastics return with federal ban overturned? Unlikely, it seems," *Global News* (18 November 2023), online: <https://globalnews.ca/news/10099317/plastic-ban-next-steps/#:~:text=Several%20provinces%20and%20territories%2C%20including,plastic%20bans%20to%20varying%20degrees>.

¹⁰⁹ This was remarked by the Retail Council of BC in 2021. See Retail Council of Canada, "B.C. expands Extended Producer Responsibility to include more products and packaging" (10 September 2021), online:

<https://www.retailcouncil.org/province/bc/bc-expands-extended-producer-responsibility-to-include-more-products-and-packaging/>.

BRITISH COLUMBIA’S APPROACH TO WASTE MANAGEMENT

In BC, the *Environmental Management Act* (EMA) serves as the primary legislation that addresses waste.¹¹⁰ The EMA actively establishes a management and recycling framework for various products and materials, aiming to reduce waste and promote environmental sustainability.¹¹¹ It broadly defines ‘waste’ and identifies different types of waste.¹¹² This report will concentrate on two pertinent legal tools that BC could implement to drastically reduce CB waste or mitigate its impact. Firstly, the government could exercise its authority under the *Recycling Regulation* to create an EPR program for CB litter, which could take the form of either a deposit-refund or a non-deposit program. Secondly, the Province has the option to prohibit CB filters under the *Single-Use and Plastic Waste Prevention Regulation (SUPWPR)*.¹¹³ The following discussion will elaborate on these options and their relevance to the issue of CB litter.

There is no legislated process for amending regulations under the EMA (including the *Recycling Regulation* and the *SUPWPR*). However, British Columbia has published a policy document that outlines their internal amendment process,¹¹⁴ which begins with a regulatory review¹¹⁵ that involves a scoping phase where the provincial government gathers information and data.¹¹⁶ The Province then reviews and sorts the information before drafting a policy intentions paper,¹¹⁷ posted on the government website for a 45-day consultation period.¹¹⁸ Intentions papers describe the objectives and proposed contents of the regulation, including any aspects of particular concern for the protection of human health and the environment.¹¹⁹ Interested parties can submit comments by fax, email, letter, or through a web-based response form.¹²⁰ Consultation contact information, instructions and response forms are specifically posted for each intentions paper.¹²¹ After the consultation feedback is reviewed, the finalized policy proposal will provide a framework for amendments to the existing regulation.¹²² Drafting instructions will then be sent to Legislative

¹¹⁰ *Environmental Management Act*, SBC 2003, c 53, ss 21, 38 and 138 [“EMA”]. These sections of the EMA give the Lieutenant Governor in Council (LGIC) broad authority to make regulations regarding waste.

¹¹¹ Blake, Cassels & Graydon LLP, *Blakes 26th Annual Overview of Environmental Law and Regulation in British Columbia 2021*, (Blake, Cassels & Graydon LLP, 2021) at 6, online: <https://www.blakes.com/getmedia/234e0eaa-976f-494d-8e71-811d65a45de8/Blakes_Overview_of_Environmental_Law_of_BC_2021.pdf.aspx>.

¹¹² Waste is broadly defined to include “(a) air contaminants, (b) litter, (c) effluent, (d) refuse, (e) biomedical waste, (f) hazardous waste” or anything else prescribed by the Lieutenant Governor in Council or the Minister. See *EMA*, *supra* note 110 at s 1.

¹¹³ BC Reg 254/2023 [“*Single Use and Plastic Waste Prevention Regulation*”].

¹¹⁴ British Columbia, “Environmental Protection Regulatory Review” (8 June 2022), online: <<https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/laws-policies-standards-guidance/legislation-regulation/environmental-protection-regulatory-review>> [“BC, “Regulatory Review”].

¹¹⁵ British Columbia, “EMA Regulatory Review Process,” (Flow chart) online: <https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/nr-laws-policy/ema_reg_review_process_flow_chart.pdf> [“BC, “EMA Regulatory Review Process””].

¹¹⁶ *Ibid.*

¹¹⁷ BC, “Regulatory Review,” *supra* note 114.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

Counsel, who drafts the proposed regulation and provides legal opinion.¹²³ When complete, the Minister of Environment and Climate Change Strategy/Cabinet will review the amendments to the regulation and Legislative Counsel's legal opinion before deciding whether to approve the regulation.¹²⁴ The final steps in the process conform with the *Recycling Regulation*.¹²⁵ If approved, the amended regulation will be deposited with the registrar who will post it in the *British Columbia Gazette*.¹²⁶ Once the regulation is posted in the *British Columbia Gazette*, it is considered part of BC's laws.¹²⁷

EXTENDED PRODUCER RESPONSIBILITY (EPR) PROGRAMS IN BRITISH COLUMBIA

British Columbia's *Recycling Regulation* outlines the regulatory framework for an EPR program for certain products. Those products include antifreeze; beverage containers; solvents and flammable liquids; pesticides; gasoline products; lead-acid batteries; pharmaceutical products; lubricating oils, empty oil containers; oil filters; paint products; electronic and electrical products; tire products; and packaging and paper products.¹²⁸

Part 2 of BC's *Recycling Regulation* outlines the EPR program for producers of products in the beverage container product category and the packaging and paper product category.¹²⁹ Producers of products in another product category may also fall under Part 2, either voluntarily or upon a director's directive.¹³⁰ The director must only require a producer of another product category to comply with Part 2 if that producer primarily uses, sells, or distributes the product from a retailer's premises in BC.¹³¹

Part 2 of the *Recycling Regulation* is designed to offer flexibility to producers to design a program that works for their industry. It focuses on meeting environmental outcomes (*i.e.* a 75% recovery rate), rather than on the operation of the EPR program.

A producer under Part 2 must submit an EPR plan for their product.¹³² The director can approve the plan if they are satisfied that 1) the plan is capable of achieving a 75% recovery rate (or another recovery rate established by the director) for each product category and any performance requirements or targets specified in the proposed plan or by the director; 2) the producer has undertaken satisfactory consultation with stakeholders; and 3) the plan adequately provides for the producer paying the collection and management costs of the plan; reasonable consumer access to collection facilities or services; certain consumer education requirements; performance reviews; a dispute resolution mechanism for producers and collection service providers; and the

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ BC Reg 449/2004, ["Recycling Reg"].

¹²⁶ BC, "Regulatory Review," *supra* note 114; See also: *Regulations Act*, RSBC 1996, c 402, s 5.

¹²⁷ *Recycling Reg*, *supra* note 125 at s 1.

¹²⁸ *Ibid.*

¹²⁹ *Ibid* at s 3 (1)(a).

¹³⁰ *Ibid* at s 3 (1)(b)

¹³¹ *Ibid* at s 3.1.

¹³² *Ibid* at s 4.

reduction of the environmental impacts of the product.¹³³ For the packaging and paper product category, the producer must provide a collection service for waste from residential premises and from municipal property.¹³⁴

Part 3 of the *Recycling Regulation* is much more prescriptive. It establishes the EPR program requirements if there is no EPR Plan in place under Part 2.¹³⁵ This involves requirements like the size of and schedule for advertisements for collection facilities,¹³⁶ the size, format, and locations of consumer information,¹³⁷ and the location and hours of collection facilities.¹³⁸

There are two possible ways to regulate CBs under the *Recycling Regulation*: by amending the regulation to add CBs as a new product category or by adding cigarettes to the existing EPR program for packaging and paper products.

If BC amended the regulation to add CBs as a new product category, CBs would then be regulated under the EPR program set out in Part 3 of the *Recycling Regulation*. If the cigarette producers wanted, however, they could submit an EPR program under Part 2 and, subject to a director's approval, CBs would be regulated under Part 2.

There is no legal mechanism that triggers the Province of BC to create a new product category that requires an EPR program. However, the government has released a policy document entitled "Five-Year Action Plan" for EPR programs that describes how the Province of BC will expand and strengthen EPR in British Columbia.¹³⁹ While the document has no legal force, the fact that it does not include cigarette butts indicates that the government may not be intent to add CBs to an EPR Program anytime soon. However, the Action Plan specifies that the government is aiming to expand EPR programs to include "broader, more generalized definitions [of products] as opposed to product-specific lists." The Action Plan also expresses the intention to expand EPR to include "moderately hazardous products" such as single-use fuel canisters and fire extinguishers, medical sharps and batteries.¹⁴⁰ Arguably, CBs constitute a moderately hazardous product, and, like aerosol cans and medical sharps, more oversight is required for their proper disposal.

Alternatively, CBs could be added to the packaging and paper product EPR category. The recently amended definition of "packaging and paper products" includes single-use products that are not health, hygiene, or safety products.¹⁴¹ However, an explanatory note on the 2020 *Recycling Regulation* amendments, specifically mentions that cigarette waste will not be captured under this category.¹⁴² There does not appear to be a legal avenue to challenge this exclusion. But, if the single-use product category was amended, then cigarette producers would be required under Part

¹³³ *Ibid* at s.5(1).

¹³⁴ *Ibid* at s 5(1)(d).

¹³⁵ *Ibid* at ss 9-14.

¹³⁶ *Ibid* at s 12.

¹³⁷ *Ibid* at s 10.

¹³⁸ *Ibid* at s 11.

¹³⁹ British Columbia, Ministry of Environment and Climate Change Strategy, "Advancing Recycling in B.C. Extended Producer Responsibility Five-Year Action Plan 2021-2026," online:

<https://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/extended_producer_five_year_action_plan.pdf> ["BC, "Five-Year Action Plan"].

¹⁴⁰ *Ibid*.

¹⁴¹ Recycling Reg, *supra* note 125 at Schedule 5, s 4.

¹⁴² British Columbia, Ministry of Environment and Climate Change, *2020 Amendments to the Recycling Regulation Explanatory Notes* (Victoria: Ministry of Environment and Climate Change Strategy, 2020) at 3.

2 of the *Recycling Regulation* to develop and submit an EPR plan that outlines how they intend to collect and manage cigarette butts, including the establishment of collection infrastructure and the financing of collection and recycling activities.¹⁴³

When considering the possibility of an EPR program for CBs, it is useful to examine the recycling efforts done for vaping products and electronic cigarettes. The Cannabis Council of Canada and Quantum Lifecycle Partners initiated a vape recycling program of vape hardware.¹⁴⁴ Launched in December 2020, this program distributed collection boxes to cannabis retailers throughout BC, Alberta and Ontario. The collaboration facilitated consumer access to recycling services. However, a report from the cannabis industry suggests that it is too early to assess the program's effectiveness because of the impact of the pandemic and the poor consumer education around the program.¹⁴⁵ This report does suggest that an industry-led solution is possible and an EPR program coupled with a consumer education policy is key to effectiveness.

DEPOSIT VS NON-DEPOSIT EPR: CASE STUDIES ON BOTTLES AND BATTERIES

In BC, there are two distinct types of EPR programs: deposit-refund and non-deposit systems. Although the *Recycling Regulation* does not specify this distinction, the government has established programs aligning with both systems. Deposit-refund EPR programs require consumers to pay a refundable deposit at their time of purchase and if they return the empty container at a designated depot, they will get their deposit back. An example is the deposit program for cans and bottles.¹⁴⁶ Non-deposit EPR programs obligate producers to manage the collection and recycling of their products and packaging. Producers typically create agencies to run these recycling programs and impose eco-fees to finance them. Consumers aren't charged a deposit upon purchase but can return these items to designated collection sites without cost. In BC, these programs include products like electronics, batteries, tires, paint, and pharmaceuticals. The producers often form agencies that operate recycling programs on their behalf, and they charge eco-fees to cover the costs of these programs.¹⁴⁷

BC reports that the deposit-return EPR program has resulted in an increase in bottles and cans being recycled.¹⁴⁸ Data from the Great Canadian Shoreline Cleanup indicates that beverage

¹⁴³ Recycling Reg, *supra* note 125 at s 4.

¹⁴⁴ "Cannabis Industry Launches Unique Vape Recycling Program, Partners with Leading Recycler," *Business Insider* (1 December 2020), online: <<https://markets.businessinsider.com/news/stocks/cannabis-industry-launches-unique-vape-recycling-program-partners-with-leading-recycler-1029853617>>; For the date when the program started, see Jennifer Brown, "Thinking outside the box," *Grow Opportunity* (22 February 2021), online: <<https://www.growopportunity.ca/thinking-outside-the-box/>>.

¹⁴⁵ Tim Wilson, "Meeting the Challenge of Vape Recycling," *StratCann* (26 July 2021), online: <stratcann.com/insight/meeting-the-challenge-of-vape-recycling>.

¹⁴⁶ British Columbia, "Extended Producer Responsibility" (10 September 2021), online: <<https://www2.gov.bc.ca/gov/content/environment/waste-management/recycling/extended-producer-responsibility>>; Recycling Council of British Columbia, "EPR Programs in BC" (n.d.), online: <<https://rcbc.ca/epr-programs-in-bc/>> ["RCBC, "EPR Programs""].

¹⁴⁷ *Ibid.*

¹⁴⁸ Clifton Curtis et al, "Extended Producer Responsibility and Product Stewardship for Tobacco Product Waste" (2014) 4:3 *Intl J of Waste Resources* 157 ["Curtis et al, "Extended Producer Responsibility""].

container litter is about 30% lower in British Columbia than in the provinces of Manitoba and Ontario, where there are no mandatory container deposit-refund laws.¹⁴⁹

The other option is a non-deposit program and an example of this type of program is the lead-acid battery program. According to the *Recycling Regulation*, there are five categories of lead-acid batteries and each can be recycled under EPR programs that have been approved by the Ministry.¹⁵⁰ Further, each EPR plan is operated by a non-profit stewardship organization, such as the Canadian Battery Association and Call2Recycle, which are financed and governed by the producers.¹⁵¹ These organizations collect, transport, and recycle the used batteries, and report their progress and performance to the Ministry.¹⁵²

One of the benefits of the EPR scheme for batteries is that it reduces waste and increases recycling rates. For example, in its 2022 Annual Report, Call2Recycle reported that it collected and recycled 2.7 million kilograms of batteries in B.C, which is a 10% increase from 2019 and a 35% increase from 2016.¹⁵³ The Canadian Battery Association also reported that it collected and recycled over 24 million kilograms of lead-acid batteries in BC in 2020, which was a 4% increase from 2019 and a 16% increase from 2016.¹⁵⁴

BENEFITS AND DRAWBACKS OF CREATING A DEPOSIT-REFUND EPR FOR CB

Academic studies suggest that the deposit-refund model of EPR is useful for products that are littered in a diffuse and wide-spread manner, such as common disposal beverage containers like bottles and cans.¹⁵⁵

The research on deposit-refund EPR programs in cities like Toronto, Vancouver, and Victoria underscore the importance of ‘informal recyclers’ to these programs’ success.¹⁵⁶ These individuals,

¹⁴⁹ CM Consulting, *Who Pays What? An Analysis Of Beverage Container Recovery And Costs In Canada*, (Report) By Clarissa Morawski (ONTARIO: CM CONSULTING, 2020).

¹⁵⁰ The five types of batteries are: sealed lead acid, passenger and light truck vehicle, commercial truck vehicle, motive, and stationary. See British Columbia, “Recycle lead-acid batteries” (29 November 2023), online: <<https://www2.gov.bc.ca/gov/content/environment/waste-management/recycling/extended-producer-responsibility/lead-acid-batteries>>; See also Recycling Reg, *supra* note 125 at s 10.

¹⁵¹ British Columbia, “Extended Producer Responsibility Plans and annual reports” (24 October 2023), online: <<https://www2.gov.bc.ca/gov/content/environment/waste-management/recycling/extended-producer-responsibility/extended-producer-responsibility-reports-plans>> [“BC, “EPR Plans and annual reports””].

¹⁵² *Ibid.*

¹⁵³ Call2Recycle Canada, *2022 Provincial Annual Report* (Submission to Acting Director, Extended Producer Responsibility, Ministry of Environment and Climate Change Strategy), (Vancouver: Call2Recycle Canada, 2022), online: <https://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/battery-and-cell/ar/call2recycle_annual_report_2022.pdf>.

¹⁵⁴ Canadian Battery Association, *2021 Annual Stewardship Report – British Columbia* (Victoria: Canadian Battery Association, 2022), online: <https://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/battery-and-cell/ar/cba_annual_report_2021.pdf>.

¹⁵⁵ Yamini Gupt & Samraj Sahay, “Review of extended producer responsibility: A case study approach” (2015) 33:7 Waste Management & Research 595; Guangli Zhou et al, “A systematic review of the deposit-refund system for beverage packaging: Operating mode, key parameter and development trend” (2020) 251 J of Cleaner Production 119660.

¹⁵⁶ Adriana Pribik Stark, *Public Spaces of Precarity: Labour Geographies of Informal Recycling in Toronto* (Master of Arts Thesis, University of Toronto, 2019) [unpublished] [“Stark, *Public Spaces of Precarity*”]; Dare Sholanke, *Waste*

often from marginalized communities, rely on collecting refundable waste as a source of income.¹⁵⁷ Despite their important role, local governments frequently overlook their contribution to the EPR programs.¹⁵⁸ This suggests that for an expansion of deposit-refund EPR programs to include CBs, it is crucial to engage with members from these communities. This engagement should address their operational insights and assess the health and safety risks they face, ensuring that the expansion of deposit-refund programs to manage CB waste is both effective and considerate of their well-being.

BENEFITS AND DRAWBACKS OF ESTABLISHING A NON-DEPOSIT EPR PROGRAM FOR CB WASTE

In their review of how tobacco companies worldwide have been addressing their waste, Hendlin and Bialous (2020) found evidence that some tobacco companies have contemplated non-deposit EPR programs as early as 1991.¹⁵⁹ In 2017, tobacco company Philip Morris published a document outlining how such a program could be implemented, suggesting that the industry could be open to implementing them.¹⁶⁰ Industry might also be willing if they are already doing this in other jurisdictions, which is why the European Union's (EU) Single-Use Plastics Directive (2019) might be significant. The Directive instructs Member states to implement a non-deposit EPR program for cigarettes by 2024.¹⁶¹ *The Recycling Regulation* enables BC to regulate CB waste through a non-deposit EPR program and industry to manage and implement this program like they do for batteries, described above.

However, it is important to point out that recent studies have shown that when addressing CB waste, EPR programs like these should be coupled with public education campaigns, or changing the perception of consumers that cigarettes are biodegradable (and therefore 'safe' to litter).¹⁶² Further, studies also show that the biggest challenge in implementing non-deposit EPR programs to address CB litter is the collection of CB litter, which is diffuse and widespread. Thus, more research is needed about how to encourage safe CB collection to facilitate EPR programs.

governance in Vancouver: Bidders' participation and the impacts of grassroots innovations (an explorative study) (MA Thesis, University of Victoria, 2019) [unpublished] ["Sholanke, *Waste governance in Vancouver*"]; Jutta Gutberlet et al, "Who are our informal recyclers? An inquiry to uncover crisis and potential in Victoria, Canada" (2009) 14:8 *Local Env't* 733 ["Gutberlet et al, "Who are our informal recyclers"].

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ Yogi Hale Hendlin & Stella A. Bialous, "The environmental externalities of tobacco manufacturing: A review of tobacco industry reporting" (2020) 49:1 *Ambio* 17 ["Hendlin & Bialous, "Environmental externalities""].

¹⁶⁰ Philip Morris International, "Tackle Climate Change" (n.d.), online: <<https://www.pmi.com/sustainability/reporting-on-sustainability/tackle-climate-change>>.

¹⁶¹ EU, *Directive 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment*, [2019] OJ, L 155/1.

¹⁶² Curtis et al, "Extended Producer Responsibility," *supra* note 148; Hendlin & Bialous, "Environmental externalities," *supra* note 159; Aron Pazzaglia & Beatrice Castellani, "Review of the Policy, Social, Operational, and Technological Factors Affecting Cigarette Butt Recycling Potential in Extended Producer Responsibility Programs" (2023) 8:6 *Recycling* 95 ["Pazzaglia & Castellani, "Policy, Social, Operational, and Technological Factors""].

Therefore, the evidence appears to indicate that any EPR scheme will require different policy measures to ensure effectiveness.¹⁶³

A benefit of the non-deposit EPR program in British Columbia is that the *Recycling Regulation* creates an opportunity for industry to collaborate with government to implement and manage the EPR program. This also appears to be a feature of the EU's EPR program, leading Hendlin and Bialous to speculate that this could lead to governments working with the tobacco industry to implement and manage EPR schemes with help from other stakeholders.¹⁶⁴ They suggest that this collaborative approach could strengthen the effectiveness of a non-EPR program for CB litter.

SINGLE-USE PLASTIC PROHIBITIONS IN BRITISH COLUMBIA

The BC Government recently enacted the *Single-Use and Plastic Waste Prevention Regulation (SUPWPR)*.¹⁶⁵ The *SUPWPR* places restrictions on the distribution of plastic shopping bags, single-use food-service ware, biodegradable and oxo-degradable packaging, film wrap, and polystyrene foam trays.¹⁶⁶ This Regulation applies to business operators and food service providers.¹⁶⁷ It came into force in two stages, with some restrictions that started on December 20, 2023, while others started on July 15, 2023.¹⁶⁸ This Regulation applies in addition to the federal *SUPPR*, meaning that even if the federal regulation omits a product, its sale and distribution may still be banned in BC.¹⁶⁹

Cigarette filters are not currently part of the *SUPWPR*, nor are they mentioned in the Province of BC's policy document outlining the commitment to begin the phase-out of single-use plastics in BC.¹⁷⁰ However, the Province of BC could theoretically amend the *Regulation* to include cigarette filters in the future.

It is also important to point out an additional benefit of the Province of BC enacting legislation banning CB filters. As described above, if a Province enacts legislation banning a substance because it believes it to be toxic, the federal Ministers must conduct an assessment to determine if that substance should be considered toxic under CEPA.

¹⁶³ Hendlin & Bialous, "Environmental externalities," *supra* note 159; Kumar Raja Vanapalli et al, "Cigarettes butt littering: The story of the world's most littered item from the perspective of pollution, remedial actions, and policy measures" (2023) 453 J of Hazardous Materials 131387; Curtis et al, "Extended Producer Responsibility," *supra* note 148.

¹⁶⁴ Pazzaglia & Castellani, "Policy, Social, Operational, and Technological Factors," *supra* note 162.

¹⁶⁵ *Single Use and Plastic Waste Prevention Regulation*, *supra* note 113.

¹⁶⁶ Note that oxo-degradable plastic means "a plastic that contains an additive that, through oxidation, leads to chemical decomposition or to the fragmentation of the plastic material into microfragments." See *ibid*.

¹⁶⁷ *Ibid* at s 4.

¹⁶⁸ *Ibid*.

¹⁶⁹ British Columbia, Ministry of Environment and Climate Change Strategy, CleanBC, *Preventing Single-Use and Plastic Waste in British Columbia – Intentions Paper* (Victoria: Ministry of Environment and Climate Change Strategy, 2022) at 7 online: <https://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/preventing_single-use_plastic_waste_intentions_paper.pdf>; See also: Talia Gordner & Julia Loney, "Plan For The Ban: B.C. Boldly Targets Single-Use Products (Plastic Or Not) In New Regulation" (23 August 2023), online (blog on McMillan LLP website): <<https://mcmillan.ca/insights/plan-for-the-ban-b-c-boldly-targets-single-use-products-plastic-or-not-in-new-regulation/>>.

¹⁷⁰ Malatest, *What We Heard: Plastic and Single-Use Waste Reduction*, Prepared for the Ministry of Environmental and Climate Change Strategy (Victoria: R.A. Malatest & Associates Ltd., 2023).

RECOMMENDATIONS FOR PROVINCIAL REGULATION OF CB WASTE

The Province of BC has jurisdiction to combat CB litter by managing it as CB waste. It can establish a deposit-return EPR program, a non-deposit EPR program or it can ban CB filters. Studies that survey waste management schemes in different countries suggest that the nature of cigarettes makes it unlikely that a single waste policy can eliminate the waste. Rather, the studies suggest that a non-deposit EPR program along with other policy options might be preferable. Further, even a non-deposit EPR program, alongside a plastic filter ban and a public education campaign discouraging CB littering, might be the best approach at effectively reducing the waste. An overview of the legal waste regime in BC suggests that these programs are possible for the Province to enact.

4. LOCAL GOVERNMENT JURISDICTION OVER CB WASTE IN BRITISH COLUMBIA

This section addresses how local governments address CB litter in BC. Located within local government jurisdiction providing the service of and regulating waste management, these include clean-up efforts, waste collection, and prohibitions against littering. This report also examines the possibility of a municipal single-use plastic ban on CB filters using the municipal power of protection of the natural environment, delegated under the *Community Charter*.

Local governments derive their authority from statutes enacted by their Province. In BC, there are three primary legislative frameworks for local governments – the *Community Charter*, the *Local Government Act*, and the *Vancouver Charter*.¹⁷¹ Outside of Vancouver, the *Community Charter* and the *Local Government Act* work in tandem to provide regional districts and municipalities with the powers to enable them to effectively fulfil their purposes and address community needs. The *Community Charter* applies to all municipalities in BC other than Vancouver – it sets out core areas of authority for making bylaws, regulations, and prohibitions – including with respect to the protection of the natural environment. The *Local Government Act* regulates both municipal and regional district elections and land-use planning, and is the primary legislation for granting service, bylaw, and financial management powers to regional districts. Regional districts generally cover larger areas and are composed of municipalities, electoral areas, and in some cases, Treaty First Nations. The City of Vancouver’s authority is governed by the *Vancouver Charter* but specifies that certain provisions of the *Community Charter* and the *Local Government Act* apply to the City.

For local governments in BC wishing to enact bylaws that address CB waste, the authority for this action is laid out in the *Community Charter* and the *Local Government Act*. Subsections 8(1) to (2) of the *Community Charter* enable municipalities to act effectively and to serve their communities by providing essential services, like waste management. The *Community Charter* also enables municipalities to regulate their services and craft different provisions or exceptions for any of their bylaws.¹⁷² Section 12 of the *Local Government Act* enables regional districts to establish services to the community, if the bylaw creating that service outlines such details as to what the service is, how it will be delivered, who it will benefit, what the maximum cost is and how the costs will be recovered.¹⁷³ It is on this basis that municipalities and regional districts can enact bylaws to possibly ban CB filters or control CB waste.

¹⁷¹ *Community Charter*, SBC 2003, c 26 [“*Community Charter*”]; *Local Government Act*, RSBC 2015, c 1 [“*Local Government Act*”]; *Vancouver Charter*, SBC 1953, c 55 [“*Vancouver Charter*”].

¹⁷² *Community Charter*, supra note 171 at s 12.

¹⁷³ *Local Government Act*, supra note 171 at s 339.

BC LOCAL GOVERNMENTS' JURISDICTION TO BAN CB FILTERS AS SINGLE-USE PLASTICS

The *Local Government Act* does not expressly grant regional districts the ability to ban single-use plastics for environmental purposes. Further, it is not clear that any provision in the Act empowers regional districts to ban single-use plastics. This appears to be confirmed with the recent decision of the Regional District of North Okanagan (RDNO). The RDNO drafted a bylaw banning single-use plastic checkout bags but decided not to go through with the ban after it conducted a legal review. The review found that regional districts do not have “clear authority to regulate single-use plastic checkout bags” under the *Local Government Act*.¹⁷⁴ Hence, it appears as though regional districts do not have the authority under the Act to ban CB filters.

Likewise, it would be difficult for municipalities to ban CB filters in the same way they banned plastic bags. Municipalities regulated under the *Community Charter*, including Victoria, have used their business regulation powers to ban plastic checkout bags.¹⁷⁵ Similarly, the City of Vancouver passed a bylaw banning plastic bags in 2022, using its jurisdiction to regulate business practices.¹⁷⁶

Both bylaws prohibit businesses from using shopping bags in their conduct of business, and a similar approach cannot be used for justifying a CB filter ban based on business regulation jurisdiction. Neither the *Vancouver Charter* nor the *Community Charter* allows municipalities to regulate what businesses sell, creating the difficulty for a municipality to ban the sale of cigarettes with filters. Although the *Community Charter* does allow municipalities to pass laws regarding the environment, BC would have to approve any such laws.¹⁷⁷

However, municipalities may be granted this jurisdiction through an agreement with the Province of BC. This was done in 2021, when the Province of BC granted municipalities authority under the *Community Charter* to regulate single-use plastics for the protection of the natural environment. They did so by amending the *Spheres of Concurrent Jurisdiction – Environment and Wildlife Regulation (Concurrent Jurisdiction Regulation)* to include a section on plastic waste reduction, which allows municipalities to enact bylaws regulating plastic bags, polystyrene food service ware containers, plastic utensils and plastic drinking straws.¹⁷⁸ Pursuant to this regulation, a municipality may adopt a bylaw regulating, prohibiting or imposing requirements on items for the purpose of protecting the natural environment. After adopting the bylaw, the municipality then notifies the Ministry of Environment and Climate Change Strategy of the council’s action, the items to be regulated, and the date of implementation.¹⁷⁹ Unfortunately, cigarette filters are not among

¹⁷⁴ Brendan Shykora, “North Okanagan regional district learns it’s not allowed to ban plastic bags,” *Kelowna Capital News* (19 November 2020), online: <<https://www.kelownacapnews.com/news/north-okanagan-regional-district-learns-its-not-allowed-to-ban-plastic-bags-3206256>>.

¹⁷⁵ See: City of Victoria, bylaw No 20-025, *Checkout Bag Regulation Bylaw* (2020), online: <<https://www.victoria.ca/media/file/checkout-bag-regulation-bylaw-no-20-025-2018pdf>>.

¹⁷⁶ *Vancouver Charter*, *supra* note 171, s 272.

¹⁷⁷ Pursuant to section 9 of the *Community Charter*, the “protection of the natural environment” is an area of concurrent authority with the provincial government. In areas of concurrent authority, a municipal council cannot pass a bylaw pursuant to a provincial regulation or through an agreement with the Province of BC without first securing provincial approval. See: *Canadian Plastic Bag Association v. Victoria (City)*, 2019 BCCA 254.

¹⁷⁸ BC Reg 144/2004, s 5 [“*Concurrent Jurisdiction Regulation*”].

¹⁷⁹ *Ibid* at ss 6(b)-6(c).

the listed items for prohibition in the *Concurrent Jurisdiction Regulation*.¹⁸⁰ Although they are not currently on the list, if CBs or cigarettes were listed, municipalities could enact bylaws regulating the plastic filters in cigarettes, meaning that they could ban the sale of cigarettes with filters.

Municipalities also have the legal authority to regulate waste management within their boundaries. They can enact bylaws to address littering, waste disposal and environmental protection. These bylaws can be crafted to allow cities to prohibit specific items from entering their landfills. For instance, they can ban yard waste, construction waste, and other materials that can be diverted or recycled.¹⁸¹ However, dealing with CBs presents unique challenges. Unlike yard or construction waste, CB waste is diffuse and widespread due to its small size and casual disposability. Enforcing a complete ban on CBs from landfills can be difficult and may inadvertently exacerbate the problem of littering.

BC LOCAL GOVERNMENTS' JURISDICTION TO MANAGE CB WASTE THROUGH SOLID WASTE COLLECTION

While municipal solid waste and recycling programs are governed by the Government of BC, municipalities and regional districts may submit waste management plans.¹⁸² Additionally, many municipalities and regional districts run depots and facilities (*i.e.* garbage dumps) for receiving solid waste, and/or administer (or contract with Recycle BC to administer) curbside collection programs.¹⁸³ These facilities participate in BC's EPR programs by collecting certain materials. For example, in the Capital Regional District (CRD), Heartland Depot collects beverage containers, electronic products, batteries (including lead-acid batteries), paints, solvents, flammable liquids, gasoline, pesticides, residential packaging and paper products, tires, antifreeze, and used lubricating oil.¹⁸⁴ These products are then passed along to the relevant producer responsibility organization. The CRD also contracts with Recycle BC to administer curbside collection in the region.¹⁸⁵

This means that if BC establishes a non-deposit EPR program, municipalities and regional districts have jurisdiction to include collection and disposal of CB waste into their existing service of waste management. They also have the flexibility to work with third party companies that might be empowered under the EPR program to collect waste, including curbside pickup.

¹⁸⁰ *Ibid* at s 5.

¹⁸¹ For example, see the general refuse restrictions policy on the Capital Regional District website: Capital Regional District, "General Refuse Restrictions" (n.d.), online: <<https://www.crd.bc.ca/service/waste-recycling/hartland-landfill-facility/banned-items>>.

¹⁸² *EMA, supra* note 110 at s 24.

¹⁸³ Capital Regional District, *Rethink Waste, 2021 Solid Waste Management Plan (Approved by Ministry of Environment: July 2023)*, (Victoria: CRD, 2023) at 24, online: <https://www.crd.bc.ca/docs/default-source/recycling-waste-pdf/solidwastemanagementplan-final-approvedbyministry2023-07-13.pdf?sfvrsn=386e04cd_4> ["CRD, 2021 Solid Waste Management Plan"].

¹⁸⁴ *Ibid* at 23.

¹⁸⁵ *Ibid* at 24.

CB RECEPTACLES, CLEAN UP AND FINES

Municipalities have two other legal and policy regimes to reduce cigarette butt pollution from streets. One example of this is publicly funded collection programs, operating in many major cities in Canada, often in partnership with the tobacco industry. Typically, this involves the municipality erecting receptacles around the city, often near participating businesses, from which the city then collects the CB waste and sends it to a landfill or sends it away for recycling. For instance, cities like Vancouver, Victoria, Montreal, and several municipalities in Ontario partnered with Terracycle to place canisters in downtown locations that the cities then collect the CB waste from. Although expansion of a program like this led to the collection and recycling of 25,000 to 150,000 butts in a year in Victoria, this program has its limitations.¹⁸⁶ Some critics have raised the concern that these programs may promote smoking by normalizing the presence of cigarette butt receptacles. Most importantly, research indicates that cigarette butt litter persists despite these programs, without a significant decrease in the level of pollution.¹⁸⁷

Another way that municipalities can reduce cigarette butt litter is by enacting bylaws prohibiting the littering of CBs and imposing fines on people who litter. Many cities in Canada have these bylaws. In the City of Vancouver, there is a fine of up to \$10,000 for people who are found littering cigarette butts.¹⁸⁸ However, many cities struggle with enforcement, and this raises problems with the effectiveness of fines for reducing CB litter. For instance, Vancouver has only issued 1,003 tickets issued in a six-year period.¹⁸⁹ Studies have found that a reason for the low enforcement rate is a low willingness by patrol officers to spend time and resources ticketing every violation.¹⁹⁰ Using an apparently stronger and tougher mechanism, in 2018, the city of Halifax implemented a ban on smoking in all but 84 designated areas around the city with nondescript signage.¹⁹¹ Although cigarette butt litter slightly reduced with this policy, recent studies show that litter remains widespread due to low visibility and transparency of the designated smoking areas, as well as a sense among police and bylaw officers that enforcing the ban everywhere is 'impossible.'¹⁹² In Halifax, only 13 infraction tickets were issued in the first three years since the ban.¹⁹³ Although a different jurisdiction and set of laws, a similar inference was made following Hawaii's state-wide prohibition on smoking in beaches, parks and recreation areas. Researchers found no measurable decline in CB litter that could not otherwise be attributed to alternative

¹⁸⁶ City of Victoria, *50% reduction in landfill disposal by 2040* [Zero Waste Victoria Report, January 2021], (Victoria: City of Victoria, 2021) online: <<https://www.victoria.ca/media/file/zwreport-2021-web-jan-2021.pdf>>.

¹⁸⁷ Lindsay Jones, "Halifax's anti-smoking revolution is all smoke and mirrors," *Maclean's* (7 January 2020), online: <<https://macleans.ca/news/canada/halifaxs-anti-smoking-revolution-is-all-smoke-and-mirrors/>> ["Jones, "Halifax's anti-smoking revolution""].

¹⁸⁸ Vancouver, "Cigarette litter reduction," *supra* note 12.

¹⁸⁹ Susan Lazaruk, "Smoke 'Em If You've Got 'Em: Violators Rarely Get Ticketed For Smoking In Metro Vancouver," *Vancouver Sun* (27 May 2018), online: <<https://vancouver.sun.com/news/local-news/smoke-em-if-youve-got-em-violators-rarely-get-ticketed-for-smoking-in-metro-vancouver/>> ["Lazaruk, "Smoke 'Em If You've Got 'Em'"].

¹⁹⁰ *Ibid.*

¹⁹¹ Jones, "Halifax's anti-smoking revolution," *supra* note 187.

¹⁹² *Ibid.*

¹⁹³ Alex Cooke, "Halifax Smoking Ban: How It's Going 3 Years Later" (15 October 2021) online: *Global News* <<https://globalnews.ca/news/8266573/halifax-smoking-ban-three-years/>>.

causes like the general decline in smoking.¹⁹⁴ These examples demonstrate that although municipal efforts ranging from increasing recycling receptacles to banning cigarettes entirely may reduce some litter, their overall effectiveness remains low.

There is another reason to be weary of using fines to address CB waste. Research from Canada shows that restrictions and fines for cigarette smoking are disproportionately more likely to impact marginalized rather than non-marginalized people. According to research on the Vancouver bylaw banning smoking in beaches and parks, enforcement of some components of the bylaw – such as the \$250 fine for infraction – are more likely to economically burden low-income smokers rather than affluent smokers.¹⁹⁵ Similarly, members of marginalized communities are more likely to experience real or perceived stigmatization and stereotyping due to public smoking restrictions.¹⁹⁶ Indeed, research on British smokers indicates that smokers of lower socioeconomic status (SES) are more likely to be stigmatized for smoking and to internalize those stereotypes, as compared to those of higher SES who have the resources, status and knowledge to be able to refute such stigmas.¹⁹⁷ This stigmatization unintentionally pervades public health legislation, policy and campaigns. Yet, at the same time, marginalized people – including, but not limited to, people who are poor, women and/or members of marginalized racial, ethnic and religious groups – are most likely to be exposed to second-hand smoke and its health risks, if there is no enforcement of restrictions at all.¹⁹⁸ This underscores the need for developing policies and enforcement measures that work towards inducing voluntary compliance and tackling issues of access to tobacco-control-related health services for disadvantaged groups, to avoid economic burdens and further (re)stigmatization.

RECOMMENDATIONS FOR LOCAL GOVERNMENT REGULATION OF CB WASTE

Considering the limitations of conventional municipal approaches like collection programs and fines, some municipalities in BC have proposed that the Province of BC should do more to curb pollution, including the City of Vancouver, the District of West Vancouver, North Vancouver City, and the City of Delta; these calls were echoed by organizations such as the Physicians for a Smoke-Free Canada.¹⁹⁹ These groups argued that there should be a province-wide EPR program. Advocates of this approach see it as more comprehensive and effective than other tools local governments use to reduce CB waste, because the EPR program shifts the onus of collection and recycling from taxpayers and municipalities to producers, distributors, and consumers of tobacco products. This type of policy does not depend on consumers changing their behavior, but instead spurs efforts to address the source and management of the CB waste.

¹⁹⁴ Jens J Currie & Stephanie H Stack, “Getting Butts Off The Beach: Policy Alone Is Not Effective At Reducing Cigarette Filter Litter On Beaches In Maui, Hawai’i” (2021) 173 *Marine Pollution Bulletin* at 5.

¹⁹⁵ Pederson et al, “Smoking on the margins,” *supra* note 88 at 9.

¹⁹⁶ *Ibid* at 10.

¹⁹⁷ Farimond & Joffe, “Pollution, Peril and Poverty,” *supra* note 88.

¹⁹⁸ Pederson et al, *supra* note 88 at 9-10.

¹⁹⁹ West Vancouver, *Cigarette Butt Disposal Bins/Outdoor Ashtrays Update*, *supra* note 18; Gyarmati, “Delta,” *supra* note 18; PSC, “Plastic waste,” *supra* note 11.

5. CONCLUSION

The environmental harm caused by CBs and CB filters is a pressing issue that requires immediate attention. The high rate of CB litter, the toxic substances they leach into our ecosystems, and the microplastic filters they release annually, are all significant concerns.

Canada has the potential to implement effective legal measures at both federal and provincial levels to combat this issue. CEPA could be a powerful tool that the federal government could use in this regard. By classifying CB filters as a new listing or adding them to the existing listing of PMIs, the federal government could regulate this waste product. However, due to recent case law around CEPA, the path to federal regulation of CB filters and CBs is complex.

At the provincial level, similar to the actions taken by Spain, the European Union, Australia, and New Zealand,²⁰⁰ BC could introduce laws that make tobacco companies responsible for gathering and disposing of CB litter, ban CB filters, or even ban cigarettes altogether.

Municipal efforts, such as those supported by the Surfrider Foundation of Canada, have shown that regular beach clean-ups and educational campaigns about the environmental harms of CB litter can have some impact on CB litter. However, as some municipalities have identified, the Province needs to develop an EPR program to manage CB waste which local governments can then help execute. This would likely be the most effective policy in reducing CB litter at a local and provincial level.

In conclusion, while the challenge is significant, so too are the opportunities for legal and regulatory responses. With concerted effort and the political will to prioritize the environment, provincial and federal government action could significantly reduce CB litter and the associated environmental harm.

²⁰⁰ Stephen Burgen, "Tobacco companies to be billed for cleaning up cigarette butts in Spain," *Guardian* (3 Jan 2023), online: <<https://www.theguardian.com/world/2023/jan/03/tobacco-companies-cleaning-up-cigarette-butts-spain>>; Althea Manasan, "Tobacco companies now have to pay to clean up cigarette butts in Spain. Some want Canada to go further," *CBC* (6 January 2023), online: <<https://www.cbc.ca/radio/thecurrent/tobacco-companies-clean-up-cigarette-butts-in-spain-1.6706188#:~:text=Read%20Transcribed%20Audio-.Tobacco%20companies%20will%20now%20have%20to%20foot%20the%20bill%20to,single%2Duse%20plastics%20by%202021>>; Austl, Commonwealth, Department of Agriculture, Water and the Environment, *National Plastics Plan 2021* (Canberra: Australian Government, Department of Agriculture, Water and the Environment, 2021), online: <<https://www.agriculture.gov.au/sites/default/files/documents/national-plastics-plan-2021.pdf>>; Hauora, "Smokefree Aotearoa," *supra* note 31.