

Nationwide Ban on Single-Use Plastics Takes Effect on Dec. 20, 2022



Industry and the provinces contend the new federal ban is unconstitutional.

Despite fierce opposition from industry and provincial governments, the federal government is going forward with its plans for a nationwide ban on single-use plastics. Here's a briefing on the newly finalized [Single-Use Plastics Prohibition Regulations](#) that officially take effect on Dec. 20, 2022.

The Road to a Nationwide Plastics Ban

While several provinces have implemented single-use plastics bans within their own borders, the federal government didn't get into the act until recently. On April 23, 2021, the federal Ministry of Environment & Climate Change Canada (ECCC) published an official Order adding 'plastic manufactured items' (PMIs) to the Schedule 1 list of toxic substances subject to regulation under the *Canadian Environmental Protection Act, 1999* (CEPA). ECCC identified 6 single-use PMIs that it could regulate under its CEPA powers:

- Checkout bags;

- Beverage stir sticks;
- Six-pack rings;
- Cutlery;
- Straws; and
- Food packaging and service ware made of plastics that are 'problematic' due to the actual environmental harm they cause or high rate of disposal in the environment.

The government also identified 2 exemptions for: i. products with a health, safety, security or other essential function, and ii. products for which there are no viable alternatives.

On Dec. 25, 2021, the government proposed regulations to ban or restrict the manufacture, import and sale of the 6 single-use PMIs. On June 20, it published the final Regulations.

The Controversy

Three weeks after the CEPA Order was published, an industry coalition filed a lawsuit accusing the federal government of extending its regulatory powers to areas reserved for provincial jurisdiction. The lawsuit also claims the government's scientific assessment of the toxicity of plastics is bogus and that the Order itself violates CEPA requirements. The federal government has declared its intention to fight the lawsuit and not allow it to interfere with its plans to protect the environment from harmful single-use PMIs.

On 28 April 2021, the ministers of the environment of Ontario, Alberta, Saskatchewan, Manitoba and Quebec wrote a letter expressing their own objections to what they see as federal usurpation of provinces' right to regulate waste management within their own boundaries. Ottawa responded by citing the Canada-wide Strategy on Zero Plastic Waste agreement signed by the federal, provincial and territorial governments in 2018 as the source of its authority to implement the Regulations.

Meanwhile, several leading municipalities, including Toronto

and Vancouver, have come out in favour of the Regulations, even though they're implementing single-use plastics restrictions of their own.

The Implementation Timetable

While the Regulations take effect on Dec. 20, the ECCC has also provided a long-term timetable for implementation of the single-use plastics ban:

Single-Use Plastics Item	Ban on Mfr. & Import for Sale in Canada	Ban on Sale	Ban on Use
Checkout bags, cutlery, straws, foodservice wares, stir sticks	Dec. 20, 2022	Dec. 20, 2023	Dec. 20, 2025
Ring carriers	June 20, 2023	June 20, 2024	Dec. 20, 2025
Flexible straws packaged with beverage containers	NA	June 20, 2024	Dec. 20, 2025

Takeaway

The federal government considers the Regulations to be part of a broader comprehensive regulatory approach to address the entire plastics lifecycle that it plans to supplement by introducing standards designed to increase the use of recycled content in certain plastic products. However, there is also a broader context to keep in mind. Federal regulation over not just plastics but other aspects of waste management and the environment have become a litigation battleground between Ottawa and the provinces. On May 10, the provinces scored a significant victory when the Alberta Court of Appeal ruled that federal regulations requiring development projects to undergo federal environmental assessment unconstitutionally infringe on provincial jurisdiction, setting the stage for a decisive Canadian Supreme Court ruling [[Reference re Impact Assessment Act](#), 2022 ABCA 165 (CanLII), May 10, 2022].

Bottom Line: The legal battle over the constitutionality of the federal ban on single-use plastics remains and likely will

remain unresolved when the new Regulations officially take effect in December.