



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

March 27, 2024

Derek Windham  
Tesla, Inc.

Re: Tesla, Inc. (the "Company")  
Incoming letter dated January 8, 2024

Dear Derek Windham:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Michael R. Stephen for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company redesign vehicle tires to avoid pollution from harmful chemicals such as 6PPD-Q.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal seeks to micromanage the Company. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Michael R. Stephen

January 8, 2024

**VIA E-Mail to shareholderproposals@sec.gov**

United States Securities and Exchange Commission  
Division of Corporation Finance  
100 F Street, N.E.  
Washington, D.C. 20549-7010

Ladies and Gentlemen:

Tesla, Inc. (the “Company”) is submitting this letter to notify the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude a shareholder proposal (the “Proposal”) from its proxy statement and proxy to be filed and distributed in connection with its 2024 annual meeting of shareholders (the “Proxy Materials”). Michael R. Stephen, an individual (the “Proponent”), submitted the Proposal.

The Company respectfully requests that the Staff advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials for the reasons discussed below. Pursuant to Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting this letter electronically no later than eighty calendar days before the Company intends to file its definitive Proxy Materials with the Commission. The Company is concurrently sending a copy of this letter to the Proponent.

***Proposal***

The Proposal sets forth the following:

“Stockholders recommend that Tesla, Inc. redesign vehicle tires to avoid pollution from harmful chemicals such as 6PPD-Q.”

***Basis for Exclusion***

The Company respectfully requests that the Staff concur in the Company’s view that the Proposal may be excluded from the Proxy Materials on the following bases:

- Rule 14a-8(i)(7) because the Proposal inextricably deals with matters relating to the Company’s ordinary business operations; and
- Rule 14a-8(i)(3), because the Proposal is so vague and indefinite as to be inherently misleading.

***A. Rule 14a(8)(i)(7) – Relates to Ordinary Business Operations***

Rule 14a-8(i)(7) allows the omission of a shareholder proposal from a registrant’s proxy statement if such proposal “deals with a matter relating to the company’s ordinary business operations.” As set out in Securities Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”), there are two “central considerations” underlying the ordinary business exclusion. One is that certain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The other relates to the degree that a proposal seeks to “micro-manage” the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. As discussed in Staff Legal Bulletin No. 14L (November 3, 2021)(the “SLB 14L”), whether or not a proposal seeks to “micro-manage” depends to a significant degree on the level of granularity set forth in the proposal and whether and to what extent the proposal inappropriately limits discretion of the board or management.

The Proposal recommends that the Company “redesign vehicle tires to avoid pollution from harmful chemicals”, stating in support, that tires are currently outsourced and redesigning tires in-house may provide savings. In seeking to dictate the

Company's decision on whether components should be designed in-house versus outsourced, and the design of its components by requiring that the new product be designed without certain chemicals, the Proposal implicates both of the central considerations identified in the 1998 Release. Determining how a company will engineer its products, and which components are to be designed in-house or procured from suppliers is fundamental to management's ability to oversee a company's ordinary course business operations. These decisions involve a wide array of business considerations, including the complexity of the component, the component's usefulness and fit in the context of the finished product, changing regulatory requirements and the resources and expertise available internally versus externally. The ability of management to assess which components are more efficiently designed in-house or procured from a supplier is fundamental to its ability to run the Company on a day-to-day basis and is not appropriate for direct shareholder oversight. Further, the management of the allocation and development of internal resources and products is complex and involves the consideration of many factors. Shareholders cannot possibly make an informed judgment about these factors, given that they are not involved in the day-to-day management of the Company.

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals that seek to micro-manage a company's ordinary business operations, including when proposals concern the design, product development or product offerings of a company, even when the design, development or product touches on a social issue. See *General Mills, Inc.* (July 2, 2010) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal requesting limits on the use of salt and other sodium compounds in the company's food products, noting in particular that the proposal "relate[d] to the selection of ingredients in [the company's] products" and that "[p]roposals concerning the selection of ingredients in a company's products are generally excludable under rule 14a-8(i)(7)"); *The Home Depot, Inc.* (Mar. 21, 2018) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal requesting that the company end its sale of glue traps); *Ball Corporation* (Feb. 4, 2016) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal requesting the company issue a report reviewing the company's policies, actions and plans to reduce BPA use in its products and set quantitative targets to phase out the use of BPA in light of reputational and regulatory risks, noting that the proposal relates to the company's product development); *Walgreens Boots Alliance, Inc.* (Nov. 7, 2016) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal requesting that the company's board of directors issue a report assessing the financial risk, including long-term legal and reputational risk, of continued sales of tobacco products in the company's stores); *Dominion Resources, Inc.* (Feb. 19, 2014) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal requesting the company to develop and provide information concerning renewable energy generation services because the proposal related to "the sale of particular products and services that the company offers," which proposals "are generally excludable"); *Mondelēz International, Inc.* (February 23, 2016) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal that the board publish a report on the company's use of nanomaterials, including describing the products or packaging that currently contain nanoparticles, why nanoparticles are being used, and actions management is taking to reduce or eliminate the risk nanoparticles may pose to human health and the environment, including eliminating the use of nanomaterials until or unless they are proven safe through long-term testing, noting that the proposal relates to the company's product development); and *Rite Aid Corp.* (Mar. 24, 2015) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal requesting that a committee of the company's board provide oversight concerning whether the company should sell a product that especially endangers public health and well-being, has substantial potential to impair the reputation of the company and would reasonably be considered by many to be offensive to the values integral to the company's promotion of its brand endangers public health and wellbeing, noting that note that the proposal relates to the products and services offered for sale by the company and proposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)).

The Company understands that in cases in which shareholder proposals raise significant social policy issues the ordinary business exclusion of Rule 14a-8(i)(7) may be found not to apply. Following SLB 14L's publication, the Staff has illustrated the application of these principles to distinguish between proposals that transcend ordinary business matters and those that are excludable under Rule 14a-8(i)(7). See, e.g., *The Kroger Co.* (Apr. 25, 2023) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal requesting the board take the necessary steps to pilot participation in the Fair Food Program for the Company's tomato purchases in the Southeast United States, in order mitigate severe risks of forced labor and other human rights violations in the Company's produce supply chain, noting that "the proposal seeks to micromanage the Company"—The Kroger Co. had argued that the proposal focused on the company's day-to-day relationships with its suppliers, and that the proposal's recitation of human rights issues that might raise a significant social policy issue did not transform the otherwise ordinary business proposal into one that transcends ordinary business); and *Amazon.com, Inc.* (Apr. 8, 2022), (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal requesting workforce turnover rates and the effects of labor market changes that have resulted from the COVID-19 pandemic, including the impact of the Company's workforce turnover on the Company's diversity, equity and inclusion, noting that the proposal related to ordinary business matters and did not focus on significant social policy issues).

The Company respectfully submits that the Proposal does not focus on a significant social policy issue. While the Proposal and its supporting statements allude to environmental risks, these risks are secondary to the Proposal's ultimate outcome of dictating how the Company engineers its products and which components should be designed in-house. As a result, by being squarely focused on the Company's design, engineering and supply chain decisions, the Proposal does not transcend the day-to-day business matters addressed by the Proposal. Further, the Company respectfully submits that the Proposal is not of the sort upon which the stockholders can properly express their social policy judgments. Instead, the Proposal concerns the Company's operational strategies, including use of internal engineering and design resources. The Company believes that the specific strategies regarding design, engineering, manufacturing and procurement are properly within the purview of management, which has the necessary capability and knowledge to evaluate the particular facts and circumstances of its business operations and take appropriate action. Based on the subject matter of the Proposal as discussed above, the Company believes that the exclusion provided under Rule 14a-8(i)(7) is applicable to the Proposal.

**B. 14a-8(i)(3) – Proposal so vague and indefinite as to be inherently misleading**

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that overly vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004). See also *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail."); *Home Depot, Inc.* (Mar. 12, 2014)(concurring in the exclusion, pursuant to Rule 14a-8(i)(3), of a proposal that the board prepare a sustainability report, which establishes metrics and benchmark objective footprint information and recommendations on the company's sustainability policies and performance, include information specified in the proposal, including multiple GRI type objective statistical indicators identifying accomplishments, failures and objectives of the company and that the report should be prepared by an independent third party organization, noting that "neither shareholder nor the company could be able to determine with any reasonable certainty exactly what actions or measures the proposal requires"); *Bank of America Corporation* (Feb. 25, 2008)(concurring in the exclusion, pursuant to Rule 14a-8(i)(3), of a proposal that the board amend its greenhouse gas emissions policies to observe moratorium on all financing investment and further involvement in activities that support MTR coal mining or the construction of new coal-burning power plants that emit carbon dioxide, as vague and indefinite); *Puget Energy Inc.* (Mar. 7, 2002)(concurring in the exclusion, pursuant to Rule 14a-8(i)(3), of a proposal that the board take the necessary steps to implement a policy of "improved corporate governance", as vague and indefinite).

As with the proposals in the precedents cited above, the Proponent's Proposal is so vague and indefinite that neither the Company nor its shareholders would know with any reasonable certainty exactly what actions or measures the Proposal requires. The Proposal leaves key terms and phrases undefined and subject to multiple interpretations, asking that the Company redesign tires to "avoid pollution" from "harmful chemicals." However, there is not sufficient guidance to enable the Company to implement the Proposal without making numerous and significant assumptions as to what the Proponent intends. For example, the Proponent uses the word "avoid", yet there is no guidance in how much avoidance the Proposal is recommending – the Company and the shareholders would have to make assumptions as to whether "avoid" means complete avoidance or, if not complete avoidance, assumptions on how to measure against how much was avoided and what level of avoidance meets the requirements of the Proposal. In addition, the Proposal does not define what "harmful chemicals" are. The Proposal provides an example of 6PPD-Q which according to the supporting statement is considered "very highly toxic" to aquatic organisms and that human health "may also be seriously harmed." Given the supporting statement, it is unclear whether "harmful" means known to be harmful, or whether there only needs to be a possibility that the chemical may be harmful. It is also unclear as to what needs to be harmed – whether it is human health or coho salmon – and what effects the chemical needs to cause to be considered "harmful," and therefore it is unclear which chemicals the Company must try to avoid. Thus, because these terms are not clearly defined, nor guidance clearly given, it is impossible for the Company and the shareholders to determine when vehicle tires have been redesigned such that the Company has achieved "avoid[ing] pollution from harmful chemicals." Due to these reasons, the Proposal may be excluded from the Company's Proxy Materials pursuant to Rule 14a-8(i)(3) as it is impermissibly vague and indefinite so as to be inherently misleading.

***Conclusion***

The Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proposal from the Proxy Materials. If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at [derek.windham@tesla.com](mailto:derek.windham@tesla.com). In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Windham", with a long horizontal line extending to the right.

Derek Windham  
Senior Director and Deputy General Counsel

Enclosures

cc: Michael R. Stephen

## EXHIBIT A

**From:**

Michael R. Stephen  
[REDACTED]

Vancouver, BC  
[REDACTED]

[REDACTED]  
[REDACTED]mstephen@earthobjective.ca  
[REDACTED]

**To:**

Tesla, Inc.  
1 Tesla Road  
Austin, Texas 78725  
Attention: Legal Department  
with a copy sent by e-mail to [shareholdermail@tesla.com](mailto:shareholdermail@tesla.com).

December 5, 2023

Dear Tesla,

I am a long-term Tesla shareholder. Thank you for your tremendous work.

Please see my attached stockholder proposal for inclusion in the Tesla 2024 AGM. I have written this proposal in compliance with the requirements to submit a stockholder proposal set by the Securities and Exchange Commission, under Rule 14a-8 of the Exchange Act.

I have continuously held more than \$25,000 USD in market value of Tesla securities entitled to vote on the proposal for at least the previous year. My broker, Questrade, told me that the best form of written evidence regarding my Tesla holdings that they can provide are my official monthly account statements. Therefore, I include with this letter my monthly statements from Questrade and summarize this information in Table 1 below.

I intend to hold the entire value of my Tesla securities, including at least \$25,000 USD in value of Tesla shares, through the date of the 2024 Tesla shareholder's meeting.

I can meet with Tesla via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of my shareholder proposal.

I can schedule a meeting to discuss my proposal with Tesla anytime during afternoon regular business hours of Tesla's principal executive offices.

Table 1 below summarizes the monthly statements of my personal Questrade account from October 2022 through to October 2023, which is the most recent statement available.

**Table 1 Tesla Shares Held**

Statement Date	Value CDN (\$)	~ Value USD (\$) @ 1.3
31-Oct-22	[REDACTED]	[REDACTED]
30-Nov-22	[REDACTED]	[REDACTED]
30-Dec-22	[REDACTED]	[REDACTED]
31-Jan-23	[REDACTED]	[REDACTED]
28-Feb-23	[REDACTED]	[REDACTED]
31-Mar-23	[REDACTED]	[REDACTED]
28-Apr-23	[REDACTED]	[REDACTED]
31-May-23	[REDACTED]	[REDACTED]
30-Jun-23	[REDACTED]	[REDACTED]
31-Jul-23	[REDACTED]	[REDACTED]
31-Aug-23	[REDACTED]	[REDACTED]
29-Sep-23	[REDACTED]	[REDACTED]
31-Oct-23	[REDACTED]	[REDACTED]

My contact information is provided at the top of this letter.

To protect my privacy, please do not publish in your proxy statement my street address or the total number or value of Tesla securities that I hold. You may include my email address, city of residence, and the fact that I hold the minimum number of shares required. I would like to discuss this request with you.

Please see the attached stockholder proposal. Microsoft Word calculates my proposal to have 474 words, including endnotes.

Sincerely,



Michael R. Stephen, PAg

## Proposal

Stockholders recommend that Tesla, Inc. redesign vehicle tires to avoid pollution from harmful chemicals such as 6PPD-Q.

## Design Goals

Tesla could collaborate with others seeking an environmentally safe tire.<sup>1</sup> Goals could include the following:

1. Equivalent safety and performance
2. Full recyclability into new tires
3. Increased durability and reduced tire wear
4. Environmental safety
5. Reduced cost.

## An Urgent Problem

In 2020, researchers discovered that a tire chemical, 6PPD-quinone (6PPD-Q), was killing 40-90% of pre-spawn adult coho salmon each year in urban streams of the US Pacific Northwest.<sup>2</sup> Acutely toxic to juvenile coho at 95 ng/L, 6PPD-Q is considered “very highly toxic” to aquatic organisms.<sup>3,4</sup>

6PPD protects tire rubber from oxidation and flexing<sup>5</sup>, reacting with ozone at the tire surface to form 6PPD-Q. 6PPD comprises 0.4-2% of tires’ mass globally,<sup>6</sup> making 6PPD-Q a ubiquitous pollutant of air,<sup>7</sup> water<sup>8</sup> and soil.<sup>9</sup>

Human health may also be seriously harmed by 6PPD-Q. Tire wear particles enter our food chain and are also inhaled deep into our lungs as fine particulate matter.<sup>10</sup> In a 2022 study, 6PPD-Q was found in the urine of children and adults, with pregnant women having the highest concentrations.<sup>11</sup> In 2023, 6PPD-Q was observed to create toxic effects in the livers of laboratory mice.<sup>12</sup>

Unrecognized until 2020, 6PPD-Q was one of the almost 50% of tire leachate chemicals that are still unidentified or have unknown toxicity.<sup>13</sup>

Tire chemicals migrate through solution in water and in tire particles from road wear and recycling.<sup>14</sup> Most recycled U.S. scrap tires are shredded for land application at locations such as children’s playgrounds, sport fields, and civil engineering projects including backfill for roads, bridges, retaining walls and septic system drain fields.<sup>15,16</sup>

Experiments with filtering road runoff show limited potential to reduce tire pollution.<sup>17</sup> Redesigning tires is the best solution and may become legally required.<sup>18,19</sup>



## Why Tesla?

- 1) Tire pollution is an extremely challenging global problem and a risk to Tesla's strategy of using tire-dependent vehicles to accelerate the world's transition to sustainable energy.
- 2) Tesla has the best material scientists in the world<sup>20</sup> and equips them to "be creative and solve engineering problems that have never been solved."<sup>21</sup>
- 3) Tesla's vehicles "are designed to be better in every way,"<sup>22</sup> yet electric cars wear tires faster than gas models due to their greater weight and torque.
- 4) Tires are still outsourced and may yield considerable savings if redesigned in-house.
- 5) Tesla has experience with first-principles redesign, creating products such as its cobalt-free battery chemistry and 4680 cell.

Please support Tesla's sustainable, inspiring future by voting for this resolution. Thank you.

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1 <https://itrcweb.org/teams/active/6ppd-q>

2 <https://www.science.org/doi/10.1126/science.abd6951>

3 <https://pubs.acs.org/doi/10.1021/acs.estlett.1c00910>

4 <https://doi.org/10.1016/j.jhazmat.2023.131601>

5

[https://www.ezview.wa.gov/Portals/\\_1962/Documents/6ppd/6PPD%20Alternatives%20Technical%20Memo.pdf](https://www.ezview.wa.gov/Portals/_1962/Documents/6ppd/6PPD%20Alternatives%20Technical%20Memo.pdf)

6 <https://www.science.org/doi/10.1126/science.abd6951>

7 <https://pubmed.ncbi.nlm.nih.gov/34551519/>

8 <https://pubmed.ncbi.nlm.nih.gov/34426371/>

9 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8988306/>

10 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664766/>

11 <https://pubs.acs.org/doi/abs/10.1021/acs.estlett.2c00821>

12 <https://pubmed.ncbi.nlm.nih.gov/36716866/>

13 <https://www.sciencedirect.com/science/article/pii/S0269749123011181>

14 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664766/>

15 <https://www.ustires.org/>

16 [https://archive.epa.gov/epawaste/conserva/materials/tires/web/html/civil\\_eng.html](https://archive.epa.gov/epawaste/conserva/materials/tires/web/html/civil_eng.html)

17 <https://www.sciencedirect.com/science/article/pii/S0045653514014805>

18 <https://earthjustice.org/press/2023/epa-grants-tribal-nations-petition-to-restrict-6ppd-in-tires>

19 [https://dtsc.ca.gov/scp/motor\\_vehicle\\_tires\\_containing\\_6ppd/](https://dtsc.ca.gov/scp/motor_vehicle_tires_containing_6ppd/)

20 <https://ir.tesla.com/webcast-2023-06-19>

21 <https://www.tesla.com/impact>

22 <https://www.tesla.com/impact>

February 7, 2024

VIA E-mail to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov) and

VIA Web Form at <https://www.sec.gov/forms/shareholder-proposal>

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission 100 F Street, N.E.  
Washington, D.C. 20549

Ladies and Gentlemen:

I, Michael R. Stephen (the “Proponent”) am the beneficial owner of shares in Tesla Inc. and have submitted a shareholder proposal (the “Proposal”) to Tesla. I am responding to the letter dated January 8, 2024 (“Company Letter”) sent to the Securities and Exchange Commission by Derek Windham. In that letter, Tesla says that they intend to exclude my Proposal from its proxy statement for their 2024 annual meeting of shareholders. Please see my following response to aid your review of Tesla’s no-action request. A copy of this letter is being emailed concurrently to Mr. Windham.

The following response demonstrates that Tesla has no basis under Rule 14a-8 for exclusion of the Proposal. I therefore respectfully ask that the Staff deny Tesla’s no-action letter request.

Nonetheless, I also suggest a few minor edits to the Proposal that could help avoid confusion without changing the Proposal’s substance.

Sincerely,

Michael R. Stephen, PAg  
Vancouver, BC

PII



**Response to No-Action Request of January 8, 2024  
Tesla Shareholder Proposal on Tire Redesign to Protect Salmon**

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# 1 Introduction

I believe that Tesla (the “Company”) relies upon unsubstantial and exaggerated arguments to support their no-action request to exclude my Proposal. As the burden of proof rests with Tesla, I therefore believe there is no basis for their requested exclusion.

In the following response, I examine each of Tesla’s arguments to aid the Security and Exchange Commission (the “Commission”) in reaching their determination.

The Proposal reads as follows:

Stockholders recommend that Tesla, Inc. redesign vehicle tires to avoid pollution from harmful chemicals such as 6PPD-Q.

Tesla says they intend to exclude the Proposal on the following bases:

- 1) Rule 14a-8(i)(7) because the Proposal inextricably deals with matters relating to the Company’s ordinary business operations; and
- 2) Rule 14a-8(i)(3), because the Proposal is so vague and indefinite as to be inherently misleading.

I discuss in **Section 2** why Tesla’s arguments do not demonstrate that the Proposal may be excluded under Rule 14a-8.

Notwithstanding this, in **Section 3** I also suggest a few minor edits for the Proposal that could help avoid any confusion without changing its substance. If requested by the Commission, these minor edits could be inserted into the Proposal.

## 2 Addressing Tesla’s Arguments

### 2.1 Summary of Tesla’s Arguments

Tesla presents the following main arguments, in the following order, to support their request:

#### 1) Ordinary Business, Rule 14a-8(i)(7)

- a. They say the Proposal micromanages, restricts their discretion to use in-house vs outsourced resources, and that product decisions are too complex for shareholders to make an informed decision.
  - i. They provide examples of no-action determinations.
- b. They say the Proposal does not raise a significant social policy issue that transcends ordinary business matters, therefore the ordinary business exclusion of Rule 14a-8(i)(7) does not apply. They say the Proposal only alludes to environmental risks, but that these risks are secondary to the Proposal’s outcome of directing the Company’s “design, engineering and supply chain decisions.”
  - i. They provide examples of no-action determinations.

## 2) Vagueness, Rule 14a-8(i)(3)

- a. They say the Proposal is “so vague and indefinite as to be misleading” because some key terms are not defined.
- b. They say the Proposal does not provide enough guidance, therefore “it is impossible to know” when Proposal’s objective has been achieved and “exactly what actions or measures the Proposal requires” and that Tesla “would have to make numerous and significant assumptions as to what the Proposal intends.”
  - i. They provide examples of no-action determinations.

### 2.2 Tesla’s Arguments Exceed the Intent of Rule 14a-8

I believe Tesla’s arguments stretch far beyond the original intent of Rule 14a-8, for example by asserting that normal, every-day words such as “avoid” are so unclear as to render the Proposal misleading and “impossible” to implement.

This practice is not uncommon. In fact, archived no-action requests on the Commission website clearly show that companies frequently present the above arguments as a basis for excluding proposals and that the Commission often does not concur with these assessments. Further, Staff Legal Bulletin (SLB) No. 14B of September 15, 2004, says that there has been

...an unintended and unwarranted extension of rule 14a-8(i)(3) as many companies have begun to assert deficiencies in virtually every line of a proposal’s supporting statement as a means to justify exclusion of the proposal in its entirety.... During the last proxy season, nearly half the no-action requests we received asserted that the proposal or supporting statement was wholly or partially excludable under rule 14a-8(i)(3).

### 2.3 Tesla’s Arguments Negate Each Other

Tesla’s arguments also cancel themselves out by claiming that the Proposal is simultaneously micromanaging while also being too vague. For example, Tesla claims the Proposal is too prescriptive because the Proposal, they say, recommends tires “be designed without certain chemicals,” yet is too vague because it “leaves key terms and phrases undefined” such as “avoid pollution” and “harmful chemicals.”

Tesla’s arguments highlight the shareholder dilemma of providing too much detail or not enough, which is addressed by SLB No 14L of November 21, 2021. This bulletin addresses micromanagement when stating that the Commission would not concur with exclusion

so long as the proposals afford discretion to management as to how to achieve such goals. We believe our current approach to micromanagement will help to avoid the dilemma many proponents faced when seeking to craft proposals with sufficient specificity and direction to avoid being excluded under Rule 14a-8(i)(10), substantial implementation, while being general enough to avoid exclusion for “micromanagement.

For example, Tesla claims to need more specific direction regarding “how to measure against how much was avoided and what level of avoidance meets the requirement,” whereas they also claim too much direction regarding the recommended tire redesign.

In contrast, my Proposal is clear about its overall goal while appropriately leaving choices such as “how to measure” and “how much is enough” (as in, how much is doable) up to Tesla’s expert discretion.

## **2.4 Tesla’s Rule 14a-8(i)(7) Ordinary Business Claims are Not Supported**

Contrary to Tesla’s claims, the Proposal is fully aligned with Rule 14a-8(i)(7) such that the Proposal:

- Allows Tesla discretion in how it achieves the Proposal’s goal.
- Raises a significant policy issue of broad societal impact,
  - for which there is ongoing public dialogue and easily accessed, current data.

This alignment is supported by the following three Commission bulletins regarding Rule 14a-8(i)(7).

### **Staff Legal Bulletin No. 14 L (November 3, 2021)**

This bulletin supersedes prior staff bulletins and describes the Commission’s “realigned approach,” observing that

the rescinded guidance may have been taken to mean that any limit on company or board discretion constitutes micromanagement.

This bulletin additionally notes that the Commission will no longer concur with some company arguments that portray a proposal’s specific requests as micromanaging if the proposal also gives the company choice in how to meet the goals. It states,

Going forward, we would not concur in the exclusion of similar proposals that suggest targets or timelines so long as the proposals afford discretion to the management as to how to achieve such goals.

It also reaffirms “an exception for certain proposals that raise significant policy issues.”

It further states,

This exception is essential for preserving shareholder’s right to bring important issues before other shareholders by means of the company’s proxy statement, while also recognizing the board’s authority over most day-to-day business matters.

The bulletin also states,

In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.

Regarding investors’ general ability to make an informed decision about a proposal, the bulletin says the Commission will consider “the availability of data, and the robustness of public discussion and analysis on the topic.”

**Staff Legal Bulletin No. 14H (CF) October 22, 2015**

The Commission expresses concern over the “unwarranted exclusion of shareholder proposals,” and states that

a proposal may transcend a company’s ordinary business operations even if the significant policy issue relates to the “nitty-gritty of its core business.” Therefore, proposals that focus on a significant policy issue transcend a company’s ordinary business operations and are not excludable under Rule 14a-8(i)(7).

**Staff Legal Bulletin No. 14E October 27, 2009**

To the extent that a proposal and supporting statement have focused on a company minimizing or eliminating operations that may adversely affect the environment or the public's health, we have not permitted companies to exclude these proposals under Rule 14a-8(i)(7).

**2.5 Tesla’s Rule 14a-8(i)(7) Examples Are Not Applicable**

None of Tesla’s seven examples support their ordinary business claim to exclude my Proposal based on Rule 14a-8(i)(7):

- For no example did Tesla propose any meaningful similarity with my Proposal.
- There *are no* meaningful similarities between Tesla’s examples and my Proposal, as demonstrated by the comparison below.

What is more, Tesla inaccurately asserts that the Commission has “**consistently** concurred with the exclusion” [emphasis mine] of shareholder proposals that concern a company’s design or develop of products. Of course, the Commission is not consistent, or deciding in the same way for all proposals that concern a company’s products,<sup>1</sup> as Tesla’s letter later acknowledges when it mentions that Proposals which concern a significant policy issue may not be excluded.

**Tesla’s First Example Does Not Support Exclusion**

Tesla’s first example, *General Mills Inc. (July 2, 2010)* involves a shareholder proposal seeking to limit salt in food products. As Tesla notes, the Commission concurred with excluding that proposal and explained that “Proposals concerning the selection of ingredients in a company’s products are generally excludable under rule 14a-8(i)(7).” “Generally,” however, does not mean always.

If we apply General Mills’ ingredient argument to my Proposal (which Tesla did not do), then 6PPD-Q from tires is more akin to asbestos in Baby Powder (see *Johnson & Johnson of March 3, 2020*) than salt in crackers.

Salt is encountered, ingested, and required as part of a person’s normal, healthy life. In contrast, 6PPD-Q and asbestos are both scientifically documented to be highly toxic in tiny quantities, both are released from some consumer products, and both cause grave consequences to the livelihoods of people where the substances’ impacts are most encountered. For example,

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<sup>1</sup> <https://www.google.com/search?client=firefox-b-d&q=consistent+definition>

traderspersons exposed to asbestos can lose their health and their ability to work, while fishermen and indigenous people lose food and employment income where salmon populations decline dramatically due to 6PPD-Q.<sup>2</sup> Thus, the impacts of both asbestos and 6PPD-Q concern major social issues of far greater significance than Tesla's example pertaining to salt in food.

In the *Johnson & Johnson (March 3, 2020)* situation, a shareholder proposal recommended that Johnson & Johnson (JNJ) “discontinue global sales of its talc-based Baby Powder” due to the harmful presence of asbestos in that product. In this case, the Commission was “unable to concur in [the Company’s] view that the Company may exclude the Proposal under Rule 14a-8(i)(7).”

Thus, the Commission allowed the JNJ shareholder proposal even though that proposal requested a major intrusion into the company’s decision making regarding a product—to completely end global sales that product.

Similarly, my Proposal concerns a product but does not go as far as to seek a product termination. My proposal only concerns the avoidance of a toxic chemical, 6PPD-Q, from the product. Furthermore, my Proposal does not even ask for the removal or reduction of an ingredient. It only recommends that the discharge of 6PPD’s oxidation by-product 6PPD-Q be avoided. Rather than *removing* 6PPD from tires, it may be possible that *adding* something to the tires or changing a design factor could alter the chemical reaction that converts 6PPD into 6PPD-Q at a tire’s rubber surface and thus avoid 6PPD-Q release.

### **Tesla’s Remaining Six Examples Do Not Support Exclusion**

None of Tesla’s remaining six no-action letter examples support exclusion of my Proposal, as described below:

- 1) *The Home Depot, Inc. (March 21, 2018)* requests the banning of a product; my Proposal seeks no ban.
- 2) *Ball Corporation (February 4, 2016)* requests the elimination of an ingredient from products; my Proposal does not request the elimination of any ingredient, as explained above.
- 3) *Walgreens Boots Alliance, Inc. (November 7, 2016)* requests a report about the risk of continuing to sell a product; my Proposal does not request a report and does not question the continuing sale of a product.
- 4) *Dominion Resources, Inc. (February 19, 2014)* requests that a committee be appointed to produce a report that provides options for increasing the amount of renewable energy the company sells and that gives customers more information about the company’s energy products. My Proposal does not request a review of the quantity of any product sold or potentially sold and does not request a report.
- 5) *Mondelēz International, Inc. (February 23, 2016)* requests a report requesting information regarding “the risk nanoparticles may pose to human health and the environment.” Whereas Tesla’s example concerns *potential* harm that *may* occur to the

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<sup>2</sup> <https://earthjustice.org/press/2023/u-s-fishing-groups-sue-tire-manufacturers-over-6ppd-impacts-on-salmon-steelhead>



environment, my Proposal concerns a highly significant and *proven* harm to the environment.

- 6) *Rite Aid Corp. (March 24, 2015)* requests oversight regarding whether to continue selling certain products; my Proposal does not question the continuing sale of any product.

## 2.6 Proposal Raises a Significant Issue as per Rule 14a-8(i)(7)

### 2.6.1 Statement of the Issue

This Proposal raises an issue of such significance and broad societal impact that it transcends Tesla's ordinary business and is a topic for which shareholders are equipped to make an informed judgement. The Proposal's issue is this:

**Contributing to the global collapse in fish populations, a highly toxic tire chemical called 6PPD-Q is threatening coho salmon with extinction along the U.S. Westcoast and may also be a major risk to human health.**

This loss of coho salmon means Tribal nations lose their treaty-protected food supply and cultural anchor, that commercial fishermen lose their livelihoods and way of life, and that other species struggle, such as southern resident killer whales which are also in danger of extinction.

Shareholders are asked to vote for a resolution recommending that Tesla redesign tires to avoid 6PPD-Q discharge and thus help save coho salmon, preserve the environment, and protect human health, culture, and livelihoods.

This issue of fish decline due to 6PPD-Q from tires has been frequently discussed in popular media, and supporting data is readily accessible online via the Proposal's footnotes.

### 2.6.2 Further Description of the Issue

Fish populations around the world are collapsing due to human activity, and vehicle tires contribute to this collapse by releasing a toxic chemical known as 6PPD-Q which kills 40-90% or more of coho salmon (*Oncorhynchus kisutch*) before they spawn, threatening some populations with extinction.<sup>3</sup> For example, in 2011 it was estimated that some Coho populations with a 90% prespawn mortality due to contaminated urban stormwater would become extinct within approximately 8 years, and it is already 13 years since that projection was made.<sup>4</sup>

Along the U.S. Westcoast, tribal nations say that the salmon loss caused by 6PPD-Q violates their treaty fishing rights while destroying their traditional food supply and cultural practices which are highly dependent upon healthy and accessible salmon populations. Three Tribes have successfully petitioned the U.S. EPA to begin regulating 6PPD in tires, while the Affiliated Tribes of Northwest Indians and the States of Washington, Oregon, Vermont, Rhode Island and Connecticut have also written to the EPA expressing their support for the petition.<sup>5</sup>

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3 <https://pubmed.ncbi.nlm.nih.gov/21786416/>

4 <https://pubmed.ncbi.nlm.nih.gov/21786416/>

5 <https://earthjustice.org/press/2023/epa-grants-tribal-nations-petition-to-restrict-6ppd-in-tires>

Meanwhile, the largest trade association of commercial fishers on the U.S. Westcoast, the Pacific Coast Federation of Fishermen's Associations, has sued 13 of the largest U.S. tire manufacturers in 2023, arguing that they are killing salmon with 6PPD-Q discharge from tires.

### 2.6.3 Tire Wear Particles & 6PPD-Q

Since 2001, worldwide car production has increased from 56 million in 2021 to 1.6 billion in 2020,<sup>6</sup> and each vehicle has several tires. Increasing vehicle use has made tire pollution an issue of global concern for two main reasons.

First, physical tire wear particles are emitted into the environment by friction between the tires and the road surface and are now a major source of microplastics (plastic pieces < 5 mm in size). These microplastics are accumulating around the world, including the oceans, and are entering the food chain.<sup>7</sup> The European Commission has proposed Euro 7 standards to reduce tire emissions of microplastics, but these standards do not yet address tire chemicals such as 6PPD-Q.

Second, tires contain numerous chemicals that leach directly into the environment as well as transformational chemicals that form when tire ingredients chemically react with another substance in the environment. The toxicity of most tire ingredients and transformational products is unknown because their potential effects have not yet been researched. 6PPD-Q is one such transformational product that was first identified in 2020 as researchers were searching for the cause of premature coho mortality in streams around Seattle, Washington. Since then, numerous studies around the world have been conducted or are underway to measure 6PPD-Q and its impact on other species and people.

All tires globally are believed to contain the tire preservative 6PPD, which is designed to protect tire rubber from degradation and cracking due to heat and chemical reaction with ozone at the tire surface. 6PPD is also present in other rubber products such as gaskets and shoes. 6PPD is infused in the tire rubber and migrates to the tire surface over time. The reaction of 6PPD with ozone creates 6PPD-Q which falls or rinses off the tire and travels via tire dust or water into the surrounding environment such as downstream fish habitat. Therefore, streams that drain from urban areas with a high road density and vehicle usage tend to have higher 6PPD-Q concentrations than rural streams. When dry periods are followed by heavy rainfall the accumulated tire wear particles and road dust can be rinsed into salmon streams resulting in 6PPD-Q concentrations 30-60 times higher than usual and resulting in salmon deaths within only a few hours.<sup>8</sup>

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6 <https://www.sciencedirect.com/science/article/pii/S0160412022006420?via%3Dihub>

7 <https://pubmed.ncbi.nlm.nih.gov/29053641/>

8 <https://globalnews.ca/news/10082602/west-vancouver-fish-kill/>

#### 2.6.4 Background on Fish Affected by 6PPD-Q

6PPD-Q is “very highly toxic” to aquatic organisms and toxic to juvenile coho at the extremely low concentration of 95 ng/L. “That’s a pinch of salt in an Olympic pool, basically,” according to University of Saskatchewan toxicologist Markus Brinkmann.<sup>9</sup>

Coho and Chinook salmon and steelhead trout are anadromous fish, which means they hatch and live in fresh water as juveniles, and then return to fresh water to spawn after living the rest of their lives at sea. Within a single species such as coho salmon, salmon exist in distinct populations or genetic groups that spawn in separate streams or tributaries and do not breed with other populations of the same species. These genetically distinct populations provide important diversity and ability to adapt to changing environmental conditions.

Adults return to the same section of stream where they were hatched to reproduce. Females dig a depression in the gravel to deposit their eggs where they are then fertilized by a male, the eggs are covered with the loose gravel and the adults die. Coho and Chinook live in freshwater for at least a year and then migrate to the ocean in the autumn when rainfall increases. Steelhead trout follow the same pattern except that they occasionally return to live in the ocean after spawning and later spawn in their natal stream again.

Individual fish species react to 6PPD-Q differently, with some exhibiting no symptoms and others dying within two hours of exposure to the 6PPD-Q concentrations found in urban streams. Research is ongoing to determine which fish are affected by 6PPD-Q and why. 6PPD is also toxic to some fish, although less-so than 6PPD-Q, and is presently of lower concern.

A common method for determining the short-term toxicity (acute toxicity) to aquatic species is the lethal concentration 50 (LC50) test in which animals are exposed to varying concentrations of a substance to observe at what concentration 50% of the specimens die after a certain period, usually 24 hours.

Among salmon tested so far, 6PPD-Q is most toxic to coho salmon (both spawning adults and juveniles) and can kill coho within only a few hours of exposure to contaminated stormwater runoff from roads. Other species are also fatally affected: white-spotted char, brook trout, rainbow trout/steelhead,<sup>10</sup> and embryonic zebrafish.<sup>11</sup> Chinook salmon<sup>12</sup> have not died when laboratory tested with 6PPD-Q concentrations that are found in streams, but do experience some deaths when subjected to undiluted roadway runoff. In another aquatic species, mussels, 6PPD-Q causes serious but sub-lethal impacts in adults<sup>13</sup> and harms their embryonic development.<sup>14</sup> Some fish do not die when exposed to 6PPD-Q in LC 50 experiments. For North American species these are sockeye salmon, Arctic char, Atlantic salmon, and brown trout. For Asian species these

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9 <https://www.interior-news.com/news/tire-residue-chemical-in-rain-runoff-kills-fish-in-urban-streams-research-finds-6501403>

10 <https://pubs.acs.org/doi/10.1021/acs.estlett.2c00050>

11 <https://www.sciencedirect.com/science/article/abs/pii/S0304389423008841>

12 <https://6ppd.itrcweb.org/>

13 <https://www.sciencedirect.com/science/article/abs/pii/S0269749121006631?via%3Dihub>

14 <https://www.sciencedirect.com/science/article/pii/S0043135419310449>

are southern Dolly Varden and cherry salmon.<sup>15</sup> However, for nearly all species, both long-term and short-term effects from 6PPD-Q are unknown.

Like other fish around the world, salmon have been greatly harmed by human activities such as excessive commercial fishing, habitat destruction including the paving over of streams, hydroelectric dams that block migration, and pollution discharge. Along the U.S. west coast, 6PPD-Q is also now a major threat to coho salmon's survival because it kills them at the least abundant stage of their life cycle just prior to reproduction. Of all the salmon that embark from the U.S. and Canada into the Pacific Ocean as juveniles, fewer than 5% return to their home streams to spawn. For already struggling salmon populations, this low return makes them extremely vulnerable to any toxin such as 6PPD-Q that could kill or harm them before reproducing.

When 6PPD-Q then kills 60% to > 90% of coho salmon just prior to spawning, almost none or zero fish are left to reproduce, leading to extinction. In contrast, the premature death rate of salmon spawning in streams without significant road runoff is <1%.<sup>16</sup>

### **2.6.5 Species Harmed by 6PPD-Q are Protected by U.S. Endangered Species Act**

Coho salmon and steelhead trout, which are killed by 6PPD-Q flowing into streams, are protected by U.S. law through the Endangered Species Act (ESA). Chinook salmon, which are killed by stormwater runoff from roads, not just 6PPD-Q on its own, are also ESA protected. Populations within three species are listed as "endangered" or "threatened" in the ESA.

Endangered species are "in danger of extinction throughout all or a significant portion of their range."

Threatened species are "likely to become endangered in the foreseeable future throughout all or a significant portion of their range."<sup>17</sup>

For coho salmon, one population is endangered and three are threatened. For steelhead trout, one population is endangered, ten are threatened, and one is a candidate for ESA protection. For Chinook salmon, two populations are endangered, seven populations are threatened, and three populations are listed as a candidate for ESA protection.<sup>18</sup>

These endangered and threatened fish are critical food for the Southern Resident Killer Whales of the U.S. and Canadian Westcoast, which have themselves been listed as endangered since 2005, meaning that these cultural icons are on the path to extinction.

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<sup>15</sup> <https://6ppd.itrcweb.org/>

<sup>16</sup> <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0028013>

<sup>17</sup> <https://www.fisheries.noaa.gov/topic/laws-policies>

<sup>18</sup> [https://www.fisheries.noaa.gov/species-directory/threatened-endangered?oq=&field\\_species\\_categories\\_vocab=1000000031&field\\_species\\_details\\_status=All&field\\_region\\_vocab=1000001126&items\\_per\\_page=25](https://www.fisheries.noaa.gov/species-directory/threatened-endangered?oq=&field_species_categories_vocab=1000000031&field_species_details_status=All&field_region_vocab=1000001126&items_per_page=25)

Coho salmon, steelhead trout, and other fish are important prey for these killer whales when their preferred food, Chinook salmon, are not sufficiently available.<sup>19</sup> Tragically, these killer whales have not been getting enough to eat since at least 2018<sup>20</sup> as Chinook body sizes and numbers are low. For example, only approximately 3% of the endangered Columbia River Chinook Salmon population remains compared to before European settlement.<sup>21</sup>

### 2.6.6 Human Health Risk

Research indicates strongly that 6PPD-Q may also be a major risk to human health. For example, 6PPD-Q has been found in human urine, including children and pregnant women.<sup>22</sup> Children exposed to 6PPD-Q had reduced body mass index and increased frequency of diarrhea and influenza.<sup>23</sup> Additionally, studies of laboratory mice, which are frequently used as a model for humans, reveal that 6PPD-Q does the following: has toxic effects on the liver; rapidly crosses the blood-brain barrier; accumulates in major organs such as the kidney, lungs, testis, liver, spleen, heart, and muscles; and transfers from mother into the placenta, embryo body and embryo brain.<sup>24</sup>

6PPD-Q is emitted from tires worldwide and is now an omnipresent global pollutant with many recent studies documenting this. People in urban environments are regularly exposed to 6PPD-Q through airborne tire dust from roads, contaminated soil and water as well as at playgrounds and sports fields that are landscaped with “crumb rubber” (rubber fragments) made from scrap (end-of-life) tires. For example, 6PPD-Q has been detected in air samples from 15 megacities around the world,<sup>25</sup> and 6PPD-Q and 10 other tire chemicals with “median to high ecological risks in surface waters” have been found in drinking water in South China.<sup>26</sup> 6PPD-Q has also been found in surface waters around Toronto, Canada,<sup>27</sup> urban streams of Australia,<sup>28</sup> and studies to quantify its presence are underway elsewhere such as 20 streams in Metro Vancouver, B.C.<sup>29</sup>

### 2.6.7 Lack of Closed-loop Recycling Increases Tire Pollution

In the absence of closed-loop tire recycling, scrap tire disposal is an ongoing challenge. For example, in the 1970s, 500,000 scrap tires were deposited off the coast of Florida to create an artificial reef. However, instead of helping fish, these dumped tires seriously harmed fish habitat, and work is now underway trying to retrieve them.<sup>30</sup>

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19 <https://www.fisheries.noaa.gov/feature-story/diversity-fish-species-support-killer-whale-diet-throughout-year>

20 <https://www.raincoast.org/2023/02/southern-resident-killer-whales-not-getting-enough-to-eat-since-2018/>

21 [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiEwZGInZeEAxX5MDQIHwlnBYsQFnoECA0QAQ&url=https%3A%2F%2Fwww.uvm.edu%2F~dstratto%2Fbcor102%2Freadings%2F01\\_salmon2019.pdf&usg=AOvVaw3DEoYBl6D0CU2c17oelkk7&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiEwZGInZeEAxX5MDQIHwlnBYsQFnoECA0QAQ&url=https%3A%2F%2Fwww.uvm.edu%2F~dstratto%2Fbcor102%2Freadings%2F01_salmon2019.pdf&usg=AOvVaw3DEoYBl6D0CU2c17oelkk7&opi=89978449)

22 <https://pubs.acs.org/doi/10.1021/acs.estlett.2c00821>

23 <https://pubmed.ncbi.nlm.nih.gov/38220074/>

24 <https://www.sciencedirect.com/science/article/abs/pii/S0048969723034654>

25 <https://www.sciencedirect.com/science/article/pii/S0269749122014208>

26 <https://pubmed.ncbi.nlm.nih.gov/36577297/>

27 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8335451/>

28 <https://www.sciencedirect.com/science/article/abs/pii/S004896972205567X>

29 <https://globalnews.ca/news/10173723/tire-chemical-salmon-funidng-research/>

30 <https://floridadep.gov/waste/permitting-compliance-assistance/content/osborne-reef-waste-tire-removal-project>

By 1990, approximately one billion scrap tires were stockpiled throughout the U.S, but by 2021, 95% had been diverted to other uses such as burning for fuel or shredded for land application at locations such as children's playgrounds, artificial turf sport fields, and civil engineering projects including backfill for roads, bridges, retaining walls and septic system drain fields.<sup>31</sup>

Chipping up tires and spreading them on sports fields is like dumping tires in the ocean to create fish habitat: rather than solving the disposal problem it causes more harm and makes proper disposal and/or recycling harder later. In the meantime, athletes playing on artificial turf get the rubber in their hair and mouths and carry it home on their clothes while being exposed to 6PPD-Q as well as known carcinogens, neurotoxicants, and endocrine disrupting chemicals.<sup>32</sup>

### 2.6.8 Widespread Public Dialogue on the Issue

Given humanity's wide dependence upon fish stocks, and the discovery in 2020 that a tire chemical was endangering coho salmon, 6PPD and its transformation product 6PPD-Q have been a topic of wide public discussion and scientific research.

As of February 6, 2024, a Google search yields the following number of results for the following key words raised by this Proposal's issue:

- 32,300 for "6PPD-Q"
- 26,400 for "6PPD tires"
- 19,400 for "6PPD salmon"
- 42,000 for "6PPD human health"
- 16,900,000 for "salmon decline."

Results specific to 6PPD-Q yield pertinent research articles, media stories ranging from local to national and international, government and industry assessments, and public actions.

The following selected internet articles highlight the types and range of public discussion regarding 6PPD-Q from tires and salmon decline.

September 20, 2019

National Geographic

*Tires: The plastic polluter you never thought about*

Discusses ocean pollution from tire particles, referencing a University of the Netherlands 2017 report that they say found that tires "contribute up to 10 percent of overall microplastic waste in the world's oceans."<sup>33</sup>

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31 See US Scrap Tire Management Report accessed at <https://www.ustires.org/>

32 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10262297/>

33 <https://www.nationalgeographic.com/environment/article/tires-unseen-plastic-polluter?loggedin=true&rnd=1707285126365>

December 3, 2020

The New York Times

*How Scientists Tracked Down a Mass Killer (of Salmon)*

Describes how 6PPD-Q was discovered to be killing coho salmon.<sup>34</sup>

January 20, 2021

New York Times

*Northwest's Salmon Population May Be Running Out of Time*

Says that “more pavement and hard surfaces have contributed to an increase in toxic storm water runoff that pollutes Puget Sound.”<sup>35</sup>

March 18, 2021

Canadian Geographic

“Killer tire chemical threatening Canadian salmon”<sup>36</sup>

November 10, 2022

European Commission

*Commission proposes new Euro 7 Standards to reduce pollutant emissions from vehicles and improve air quality.*

Says, “Battery electric vehicles also still cause pollution from brakes and microplastics from tyres. Euro 7 rules will reduce these emissions and keep vehicles affordable for consumers.”<sup>37</sup>

May 17, 2023

Reuters

*Insight: Tyre-makers under pressure as too much rubber hits the road*<sup>38</sup>

Discusses extra weight of electric vehicles releasing 6PPD from tires and its lethal effects on some fish.

August 21, 2023

Mongabay

*Rolling car tires into the global circular economy*

Discusses 6PPD, tires, toxicity and need for full recycling of tires to avoid pollution.<sup>39</sup>

September 8, 2023

Rubber News.

*Our View: Tackling the 6ppd problem together is imperative*

Says a solution is needed for 6PPD in tires and people need to work together due to harm to salmon and risk to human health.<sup>40</sup>

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34 <https://www.nytimes.com/2020/12/03/climate/salmon-kill-washington.html>

35 <https://www.nytimes.com/2021/01/20/climate/washington-salmon-extinction-climate-change.html>

36 <https://canadiangeographic.ca/articles/killer-tire-chemical-threatening-canadian-salmon/>

37 [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6495](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6495)

38 <https://www.reuters.com/business/autos-transportation/tyre-makers-under-pressure-too-much-rubber-hits-road-2023-05-17/>

39 <https://news.mongabay.com/2023/08/rolling-car-tires-into-the-global-circular-economy/>

40 [https://www.rubbernews.com/opinion/opinion-6ppd-problem-must-be-solved-together?adobe\\_mc=MC MID%3D31088492044908296383292271036096291670%7CMCORGID%3D138FFF255](https://www.rubbernews.com/opinion/opinion-6ppd-problem-must-be-solved-together?adobe_mc=MC MID%3D31088492044908296383292271036096291670%7CMCORGID%3D138FFF255)

November 2, 2023

Earthjustice

*EPA Grants Tribal Nation's Petition to Restrict 6PPD in Tires*

Three US tribes petitioned the US Environmental Protection Agency to prohibit the use of 6PPD in tires due to that chemical's lethal harm to salmon and other wildlife upon which their cultures depend. This petition was supported by a formal resolution by the Affiliated Tribes of Northwest Indians of the United States (ATNI). The ATNI represents "American Indians/Alaska Natives and tribes of Washington, Idaho, Oregon, Montana, Nevada, Northern California and Alaska."<sup>41</sup> They state that "the high toxicity and ubiquity of 6PPD-q presents an unreasonable risk to treaty rights and to tribal communities that rely on salmon and steelhead for cultural, subsistence and ceremonial purposes."<sup>42</sup>

November 3, 2023

U.S. Tire Manufacturers Association (USTMA)

*USTMA Pledges to Work with EPA on Appropriate TSCA Risk Management Approach for 6PPD*<sup>43</sup>

November 3, 2023

Bloomberg Law

*First US Rule for Tire Chemical Part of Broader EPA Effort*<sup>44</sup>

November 5, 2023

CBS News

*Fed regulators to review car-tire chemical that kills salmon*<sup>45</sup>

November 5, 2023

Fortune Magazine

*Tire industry scrambles to replace 60-year-old chemical hazardous to salmon: 'One of the biggest environmental issues that the world hasn't known about'*

Article discusses danger of 6PPD-Q from tires to salmon and the salmon's importance as food and culture to tribes of the US Pacific Northwest and California.<sup>46</sup>

November 6, 2023

Truck News

*EPA to study risks of tire-toughening chemical, 6PPD*<sup>47</sup>

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<sup>41</sup> <https://earthjustice.org/document/affiliated-tribes-of-northwest-indians-6ppd-resolution>

<sup>42</sup> <https://earthjustice.org/press/2023/epa-grants-tribal-nations-petition-to-restrict-6ppd-in-tires>

<sup>43</sup> <https://www.ustires.org/ustma-pledges-work-epa-appropriate-tsca-risk-management-approach-6ppd>

<sup>44</sup> <https://news.bloomberglaw.com/environment-and-energy/first-us-rule-for-tire-chemical-coming-in-broader-epa-effort>

<sup>45</sup> <https://www.cbsnews.com/sanfrancisco/news/fed-regulators-review-car-tire-chemical-kills-salmon/>

<sup>46</sup> <https://fortune.com/2023/11/05/tires-chemical-rubber-preservative-6ppd-epa-investigation-salmon-tribes/>

<sup>47</sup> <https://www.trucknews.com/health-safety/epa-to-study-risks-of-tire-toughening-chemical-6ppd/1003179392/>



November 6, 2023

YaleEnvironment360

*After Salmon Deaths, EPA Takes Aim at Toxic Chemical Issuing from Car Tires*<sup>48</sup>

November 7, 2023

The Globe and Mail

*The toxin detectives at the University of Saskatchewan*

Discusses researchers investigating 6PPD from tires and its effect on salmon.<sup>49</sup>

November 8, 2023

Earthjustice

*U.S. Fishing Groups Sue Tire Manufacturers Over 6PPD Impacts on Salmon, Steelhead*

The Institute for Fisheries Resources and the Pacific Federation of Fishermen's Associations sue tire manufacturers due to 6PPD from tires killing fish protected by the U.S. Endangered Species Act. A senior attorney at Earthjustice says "Tire companies are violating the Endangered Species Act by continuing to use 6PPD in tires." She continues, "Manufacturers have known for years that they must invest in viable alternatives, yet, they continue to kill critically imperiled salmon and other fish protected under the ESA. It is time for these companies to be held accountable for the devastating impact 6PPD-Q has had on our fisheries."<sup>50</sup>

November 8, 2023

Forbes Magazine

*Fishermen Sue Tire Manufacturers Over Toxic Chemicals They Say Are Harming Salmon And Trout*<sup>51</sup>

November 8, 2023

The Associated Press

*Commercial fishing groups sue 13 US tire makers over rubber preservative that's deadly to salmon*<sup>52</sup>

November 9, 2023

Global News

*Chemical found in tires suspected in West Vancouver death of salmon*

Describes how 30 coho found dead in stream after heavy rainfall in area that drains from major road. The Canadian government is monitoring 6PPD-Q concentrations and says that they commonly observe concentrations high enough in streams to kill coho in Metro Vancouver.<sup>53</sup>

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48 <https://e360.yale.edu/digest/epa-tire-chemical-salmon-6ppd>

49 <https://www.theglobeandmail.com/life/adv/article-the-toxin-detectives-at-the-university-of-saskatchewan/>

50 <https://earthjustice.org/press/2023/u-s-fishing-groups-sue-tire-manufacturers-over-6ppd-impacts-on-salmon-steelhead>

51 <https://www.forbes.com/sites/maryroeloffs/2023/11/08/fishermen-sue-tire-manufacturers-over-toxic-chemicals-they-say-are-harming-salmon-and-trout/?sh=6086af1ca711>

52 <https://apnews.com/article/salmon-lawsuit-tires-6ppd-ae6e26744841b96f314c6fb82e93e8f5>

53 <https://globalnews.ca/news/10082602/west-vancouver-fish-kill/>

November 11, 2023

Canadian Broadcasting Corporation (CBC)

*Stream watchers fear chemical found in tires killed salmon in West Vancouver creek*  
Discusses efforts by the West Vancouver Streamkeeper Society, a local high school, and the Canadian government researching the issue. Mentions concern about rubber from old tires on playground leaching into the stream. Also mentions the Friends of Bowker Creek Society and Vancouver Island University collecting chemistry data about streams.<sup>54</sup>

November 19, 2023

Canadian Broadcasting Corporation (CBC)

*B.C. stream watchers link 'unprecedented' coho salmon kill to tire toxin and drought.*<sup>55</sup>

December 18, 2023

Pacific Salmon Foundation

*2023 Annual Report*

Mentions 6PPD-Q as one of their four top priorities for helping salmon during 2023.<sup>56</sup>

2023

Rubber Journal of Asia

*US commercial fishing groups sue tyre makers due to 6PPD's effect on fishing*<sup>57</sup>

January 17, 2024

Times Colonist

*Toxin linked to tire wear found in water samples from Colquitz tributary*<sup>58</sup>

Describes volunteers with the Peninsula Streams Society finding 6PPD-Q in water samples from a fish stream.

In addition, numerous articles such as the following examples discuss fish decline worldwide.

November 2, 2006

NBC News

*Seafood could collapse by 2050, experts warn*

“If current trends of overfishing and pollution continue, the populations of just about all seafood face collapse by 2050, a team of ecologists and economists warns in a study published in Friday’s issue of the journal *Science*.”<sup>59</sup>

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54 <https://www.cbc.ca/news/canada/british-columbia/coho-salmon-carcasses-brothers-creek-6ppd-quinone-1.7024755>

55 <https://www.cbc.ca/news/canada/british-columbia/coho-salmon-dying-1.7033300>

56 <https://psf.ca/blog/a-year-in-review-celebrating-salmon-wins-in-2023/>

57 <https://rubberjournalasia.com/us-commercial-fishing-groups-sue-tyre-makers-due-to-6ppds-effect-on-fishing/>

58 <https://www.timescolonist.com/local-news/toxin-linked-to-tire-wear-found-in-water-samples-from-colquitz-tributary-8120856>

59 <https://www.nbcnews.com/id/wbna15532333>

September 16, 2015

Scientific American

*Ocean Fish Numbers Cut in Half Since 1970*

“The amount of fish in the oceans has plunged to the “brink of collapse”<sup>60</sup>

2017

The World Bank

*Life Below Water*

“Almost 90 percent of global marine fish stocks are now fully exploited or overfished...”<sup>61</sup>

July 13, 2018

United Nations Conference on Trade and Development (UNCTAD)

*90% of fish stocks are used up – fisheries subsidies must stop*<sup>62</sup>

July 27, 2020

National Geographic

*Many freshwater fish species have declined by 76% in less than 50 years*<sup>63</sup>

February 23, 2021

The Guardian

*Global freshwater fish populations at risk of extinction, study finds*<sup>64</sup>

May 24, 2022.

Oregon Public Broadcasting (OPB)

*The US has spent more than \$2B on a plan to save salmon. The fish are vanishing anyway.*

Describes factors causing decline of salmon in U.S. Pacific Northwest, including overfishing, hydroelectric dams.<sup>65</sup>

November 8, 2022

Discover Magazine

*The Real Reason Global Fish Stocks are Declining – And What You Can Do About It*<sup>66</sup>

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60 <https://www.scientificamerican.com/article/ocean-fish-numbers-cut-in-half-since-1970/>

61 <https://datatopics.worldbank.org/sdgateatlas/archive/2017/SDG-14-life-below-water.html>

62 <https://unctad.org/news/90-fish-stocks-are-used-fisheries-subsidies-must-stop>

63 <https://www.nationalgeographic.com/animals/article/migratory-freshwater-fish-decline-globally?loggedin=true&rnd=1707105442263>

64 <https://www.theguardian.com/environment/2021/feb/23/global-freshwater-fish-populations-at-risk-of-extinction-study-finds>

65 <https://www.opb.org/article/2022/05/24/pacific-northwest-federal-salmon-hatcheries-declining-returns/>

66 <https://www.discovermagazine.com/planet-earth/the-real-reason-global-fish-stocks-are-declining-and-what-you-can-do-about>

### 2.6.9 Summary

This Proposal deals with the highly significant issue of fish population collapse due to human causes, in particular, pollution from a tire chemical called 6PPD-Q.

This is also an issue of great social importance with wide-ranging implications for the environment, and for human health, employment, and culture.

Public discussion regarding 6PPD-Q from tires and salmon has been featured in local, national, and international media as well as trade publications and government literature. In addition, a wide range and growing number of scientific publications address the subject with data from around the world.

### 2.7 Commission Guidance regarding Rule 14a-8(i)(3)

**Staff Legal Bulletin No. 14B (September 15, 2004)** makes the following statements regarding exclusion or modification of a proposal

Specifically, reliance on rule 14a-8(i)(3) to exclude or modify a statement may be appropriate where:

... The resolution contained in the proposal is so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires – this objection also may be appropriate where the proposal and the supporting statement, when read together, have the same result...

...As such, the staff will concur in the company's reliance on rule 14a-8(i)(3) to exclude or modify a proposal or statement only where that company has demonstrated objectively that the proposal or statement is *materially* false or misleading.

Therefore, Tesla may exclude this Proposal based on Rule 14a-8 **only** if it has demonstrated **objectively** that my Proposal is *materially* false or misleading.

### 2.8 Tesla's Rule 14a-8(i)(3) Examples are Not Applicable

None of Tesla's four examples support their vagueness claim to exclude my Proposal based on Rule 14a-8(i)(3), as demonstrated below:

- For no example did Tesla propose any meaningful similarity with my Proposal.
- For no example does a careful comparison reveal any meaningful similarity with my Proposal.

As demonstrated below, each of Tesla's four examples provided to support their no-action request based upon Rule 14a-8(i)(3) are not applicable to my Proposal. Furthermore, for not one example did Tesla propose any factual similarity between it and my Proposal. Tesla's observation, therefore, that other proposals have been found to be vague and indefinite has no bearing upon my Proposal.

*Dyer v. SEC, 287 F.2d 773, 781 (8th Cir. 1961)*

When concurring with the company, the Commission noted that, “The functions and purposes of the office to be created are left completely undefined in the proposal.”

In contrast to the cited example, this Proposal makes its function and purpose clear:

- Its function is to redesign Tesla’s vehicle tires to avoid (minimize) the release of 6PPD-Q from those tires.
- Its purpose is to reduce the number of salmon that are killed prematurely each year from 6PPD-Q leaching from tires into fish waterways. Reducing these salmon deaths would thereby lessen the harm to people whose traditional food and culture depend upon healthy salmon populations, as described in the Earthjustice article that is referenced by my Proposal.

*Home Depot, Inc. (Mar. 12, 2014)*

As Tesla noted, this example requested a sustainability report, and the Commission concurred to exclude the proposal based on Rule 14a-8(i)(3). However, Tesla did not provide any comparison or propose any similarities between that example and this Proposal. Furthermore, my proposal does not request a report.

*Bank of America Corporation (Feb. 25, 2008)*

*Puget Energy Inc. (Mar. 7, 2002)*

Again, Tesla did not propose any similarities between these two examples and my Proposal. One example requested a new policy while the other requested a policy amendment. My Proposal does not request either a new policy or an amended one.

## 2.9 Tesla’s Rule 14a-8(i)(3) Arguments are Exaggerated

Tesla’s vagueness claim (Rule 14a-8(i)(3)) regarding the meaning of non-technical, every-day words used in the Proposal is exaggerated, demonstrated by Tesla’s use the same words in their 2022 Impact Report<sup>67</sup> without providing any accompanying definitions.

In making this claim, Tesla ignores two basic and commonly used language processes: 1) accessing easily obtained and understood dictionary definitions; 2) interpreting words or phrases according to the context in which they are used.

For example, Tesla criticizes the Proposal for “leav[ing] key terms and phrases undefined and subject to multiple interpretations...” and provides as examples “avoid pollution,” “harmful chemicals,” with further discussion given to “avoid.” They further state that,

**because these terms are not clearly defined, nor guidance clearly given, it is impossible** for the Company and the shareholders **to determine** when vehicle tires have been redesigned such the Company has achieved “avoid[ing] pollution from harmful chemicals. [emphasis added]

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<sup>67</sup> [https://www.tesla.com/en\\_ca/impact](https://www.tesla.com/en_ca/impact)

Tesla's claim that it is **impossible** to understand the Proposal without definitions appears exaggerated. What is more, Tesla's 2022 Impact Report uses these identical words without providing any definitions or interpretive notes yet expects readers to understand their meaning, as follows:

**Pollution** from burning fossil fuels leads to eight million premature deaths globally each year.

**Chemical Processing**

A single Tesla vehicle **avoids** 55 tons of CO<sub>2</sub>e over its life. [emphasis added]

Tesla's Impact Report does not mention "harm," but does mention the similar word "dangerous":

"...**dangerous** mining activities..." [emphasis added]

Rather than not understanding the normal meaning of the word "avoid," it seems as if Tesla is instead saying they need to be told specifically how much 6PPD-Q discharge to avoid. As mentioned earlier, the Proposal leaves Tesla with discretion to determine the amount of avoidance and it is not yet known how much avoidance is achievable.

Tesla's arguments are similar to those of Citigroup (December 23, 2021) who unsuccessfully argued that their shareholder's proposal was concurrently 1) micromanaging and 2) vague and indefinite. To support their assertions that the proposals are vague and indefinite, both companies argued that the meanings of key terms in their respective shareholder proposals were unclear. Citigroup's allegedly unclear term is "contribute" while Tesla's are "avoid," "pollution," "harmful," and "chemicals." Citigroup's no-action request was denied.

Nevertheless, and to avoid confusion and to demonstrate these words' normal meanings, definitions from the Cambridge Essential American Dictionary<sup>68</sup> are provided below in abridged format.

**Pollution**

damage caused to water, air, etc. by harmful substances or waste.

**Harmful**

causing damage or injury

**Chemical**

any basic substance that is used in or produced by a reaction involving changes to atoms or molecules

**Avoid**

To prevent something from happening.

As the above definitions indicate, the Proposal uses common, simple words and phrases that both Tesla and shareholders can understand.

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<sup>68</sup> <https://dictionary.cambridge.org/dictionary/essential-american-english/>

## 2.10 Micromanaging & Vagueness Refuted Together Rule 14a-8(i)(3) & Rule 14a-8(i)(7)

As Tesla’s assertions of micromanaging and vagueness are closely related, they are further discussed together below, revealing that the Proposal:

Is not materially false or misleading.

- 1) Does not seek to restrict Tesla to “in-house” operations.
- 2) Is not too prescriptive as to be micromanaging.
- 3) Is not too complex for investors to consider.

Recall that according to SLB No. 14B, Tesla may exclude my Proposal based on Rule 14a-8 **only** if it has demonstrated **objectively** that my Proposal is “*materially false or misleading*” [bold mine]. Definitions for the key terms above are provided below from the Cambridge Essential American Dictionary,<sup>69</sup> in abridged format.

### **Objectively**

in a way that is based on facts and not influenced by personal beliefs or feelings.

### **Materially**

in an important or noticeable way.

### **False**

not true, but made to seem true in order to deceive people.  
not correct.

### **Statement**

something that someone says or writes officially, or an action done to express an opinion.

### **Misleading**

causing someone to believe something that is not true.

As explained below, Tesla has not demonstrated objectively that my Proposal is *materially* false and misleading. In addition, the Commission’s italicized emphasis of “materially” increases the burden of proof that Tesla must demonstrate in their attempt to portray my Proposal as “false and misleading” based upon Rule 14a-8(i)(3).

Tesla’s opening argument for Rule 14a-8(i)(3) relies upon the following quote from the SLB 14B (September 15, 2004) which Tesla takes out of context and misinterprets when asserting that my Proposal is excessively vague and should therefore be excluded. The quoted bulletin mentions a type of proposal so vague that

Neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.

However, the above SLB 14B quote refers to one of five reasons that “companies *have requested*” [emphasis mine] the Commission accept to exclude a proposal, *not* a reason that the Commission *will use*. The Commission then notes that they spend too much effort responding to such requests and that there has been an “unintended and unwarranted extension of rule 14a-8(i)(3).”

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<sup>69</sup> <https://dictionary.cambridge.org/dictionary/essential-american-english/>

Next, Tesla's micromanaging argument rests upon two fundamentally inaccurate statements about the Proposal. First, Tesla claims that the Proposal seeks to "dictate the Company's decision on whether components should be designed in-house versus outsourced." Tesla's use of the term "dictate" will be addressed later. Regarding "in-house" vs "outsourced," it is not the Proposal's intention to restrict Tesla in this way and this is not an accurate interpretation. Instead, Tesla seems to assert that an important black and white distinction exists on this subject when the reality is grey.

For example, while the Proposal mentions potential cost savings from an in-house design, it also explicitly says that "Tesla could collaborate with others seeking an environmentally safe tire." This clearly invites Tesla to work with partnerships at its discretion. "Collaborate" is a verb meaning to "work jointly on an activity, especially to produce or create something."<sup>70</sup>

In the context of designing, manufacturing, and selling vehicles, it is easy to understand that some level of outside expertise or componentry is needed for virtually every aspect of a vehicle. For example, at Tesla's 2020 Battery Day,<sup>71</sup> Tesla said that its new 4680 battery cell was being developed in-house while at the same time it was public knowledge that Tesla also had long-term partnerships with battery researchers at Canadian universities with whom it had filed battery patents.<sup>72</sup> Manufacturing of these 4680 cells began at a Tesla-owned facility and was then expanded to a Panasonic facility. This demonstrates that an "in-house" project does not have to exclusively involve only Tesla staff or Tesla owned facilities.

Furthermore, Tesla's micromanaging argument relies upon an incorrect statement about the Proposal, stating that tires "be designed without certain chemicals." As I discuss again later, the Proposal recommends that Tesla "redesign vehicle tires to **avoid pollution** from harmful chemicals such as 6PPD-Q" [emphasis added]. The Proposal is thus focused on the **discharge** to the environment of harmful chemicals from tires, not the **content** of the tires themselves. This is an important distinction.

The Proposal explains that 6PPD-Q is not present in the tires but is formed by the reaction of the tire preservative 6PPD with oxygen at a tire's surface. A tire design may be developed that avoids 6PPD-Q discharge without removing 6PPD from tires.

Despite Tesla's assertion to the contrary, the Proposal is clear about what chemicals to avoid: tire chemicals such as 6PPD-Q that published scientific studies show are very highly toxic to salmon. Nevertheless, if Tesla wished clarification on any such points, they could have called me during one of the several meeting times that I had offered when I submitted my Proposal; they did not.

Tesla's reasoning also seems to omit a basic understanding of the difference between a substance that scientific studies explicitly state is harmful and a substance that only has the "possibility" of being harmful. Absent this understanding, Tesla claims the Proposal is unclear about what harm

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<sup>70</sup> <https://www.google.com/search?client=firefox-b-d&q=definition+of+collaborate>

<sup>71</sup> <https://www.google.com/search?client=firefox-b-d&q=tesla+battery+day#fpstate=ive&vld=cid:be499ed3,vid:l6T9xIeZTds,st:0>

<sup>72</sup> <https://techtransfercentral.com/2019/08/12/teslas-canadian-research-partners-on-the-trail-of-energy-dense-li-ion-battery-cells/>



is to be avoided: harm to fish, people or both. Even though harm to fish causes harm to people through bioaccumulation of toxins in the human food chain and through loss of culture and food sources, the Proposal gives Tesla the flexibility to focus their effort on tire chemicals that only directly harm fish if they choose.

The Proposal's statements regarding scientific articles that raise about 6PPD-Q's potential human health impacts bolster the importance of addressing 6PPD-Q rather than making the Proposal unclear, as Tesla claims. Research into 6PPD-Q is ongoing, and a new study published on January 12, 2024, now shows an association between 6PPD-Q and a lower body mass index in exposed children<sup>73</sup>. Given the Proposal's mention of high levels of 6PPD-Q in the urine of pregnant women, this additional discovery increases the social importance and urgency of this Proposal's recommendation to reduce 6PPD-Q discharge from tires.

Finally, this issue is not too complex for Tesla shareholders to consider. While the actual designing of tires that avoid 6PPD-Q discharge is complex, understanding the overall issue and its significance are not, and are within the ability of shareholders to consider. For example:

Fishermen understand the issue. They are proud, independent providers who have witnessed their livelihoods and the salmon that supported it destroyed.

Tribal elders understand the issue. They wonder what natural inheritance will remain for their communities whom they lead, whose entire culture has depended upon salmon since time immemorial, and whose federally protected, treaty fishing rights are violated by 6PPD-Q.

Students understand the issue.<sup>74</sup> They understand what pollution is, understand that salmon feed people and endangered killer whales alike, and understand that when the tire chemical 6PPD-Q enters streams it can kill salmon.

Litigators, policy makers, and tire manufacturers understand the issue.<sup>75</sup> In fact, they are already searching for a solution.

## 2.11 Proposal is a Voluntary Recommendation Only

An additional point regarding micromanaging is that Tesla's letter overstates the Proposal's authority over Tesla by using the words "requiring," "requires," "requirements" and "must" to describe the Proposal's implications. For example, Tesla says that the Proposal limits their discretion in the following ways:

- By "**requiring** that the new product be designed without certain chemicals"
- By leaving Tesla uncertain what "measures the Proposal **requires**"
- By leaving Tesla uncertain what "level of avoidance meets the **requirements** of the Proposal"

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<sup>73</sup> <https://pubmed.ncbi.nlm.nih.gov/38220074/>

<sup>74</sup> <https://smea.uw.edu/currents/the-necessity-of-patience-collaboration-and-hope-reflections-on-the-west-coast-salmon-story/>

<sup>75</sup> [https://dtsc.ca.gov/2023/07/26/news-release\\_t-06-23/](https://dtsc.ca.gov/2023/07/26/news-release_t-06-23/)

- By leaving Tesla uncertain “which chemicals the Company **must** try to avoid” [emphasis added].

In contrast, this Proposal does not compel Tesla to do anything. It is only a recommendation. Even if the resolution receives 100% shareholder support, Tesla will retain full legal discretion to do as it chooses.

### 3 Potential Minor Edits to Avoid Confusion

As I have demonstrated above, Tesla has no basis for excluding my Proposal as currently worded. Nonetheless, I also offer the Commission a few minor edits that may help avoid confusion without changing the substance of the proposal. If the Commission requested that any or all of these edits be used, I would be agreeable to that.

Staff Legal Bulletin No. 14B of September 15, 2004, explains that staff have

a long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature, and do not alter the substance of the proposal. We adopt this practice to deal with proposals that comply generally, with the substantive requirement of rule, 14a-8, but contain some minor defects that could be corrected easily.

Please see the **Appendix** for a suggested edited version of my proposal, provided with tracked changes for your convenience. Microsoft Word calculates this edited proposal to have 483 words, including endnotes. Three minor edits are suggested:

- 1) Change “avoid pollution from harmful chemicals such as 6PPD-Q” to “avoid pollution from 6PPD-Q, a chemical toxic to coho salmon.”
- 2) Add the sentence “Internal and/or external resources and/or partnerships could be used, at Tesla’s discretion.”
- 3) Delete one line from the “Why Tesla?” section.

## 4 Conclusion

Tesla's most recent Impact Report from 2022 states that

Our mission is to accelerate the world's transition to sustainable energy. In pursuit of this goal, we build products that are designed to replace some of the planet's biggest polluters – while trying to do the right thing along the way.<sup>76</sup>

This Proposal addresses an unintended consequence of the world's transition to sustainable energy—that electric vehicles (EVs) create significantly more tire pollution than combustion models. This tire pollution, in the form of a toxic chemical known as 6PPD-Q, is killing ESA endangered coho salmon in urban streams the U.S. Westcoast so rapidly that some fish populations may have already become extinct because of it.

Tesla's Model Y vehicle became the world's most popular EV in 2023, and Tesla continues working to expand EV adoption rapidly. Unless tires are redesigned to avoid 6PPD-Q pollution, coho salmon and other species will be irreversibly harmed.

Losing coho salmon massively harms ecosystems and people's lives who depend upon them. Many people can't imagine life on the Westcoast without the iconic killer whale, yet these animals are also in danger of extinction and need more abundant prey such as coho salmon to survive.

Tires are one of the world's biggest polluters, and Tesla shareholders deserve to consider this issue.

I therefore respectfully request that the Commission inform Tesla that they do not concur with Tesla's request to exclude my proposal from their 2024 proxy materials.

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<sup>76</sup> [https://www.tesla.com/en\\_ca/impact](https://www.tesla.com/en_ca/impact)

**Proposal**

Stockholders recommend that Tesla, Inc. redesign vehicle tires to avoid pollution from 6PPD-Q, a chemical toxic to coho salmon.

Deleted: harmful chemicals such as

Deleted: .

Internal and external resources could be used at Tesla's discretion.

**Design Goals**

Tesla could collaborate with others seeking an environmentally safe tire.<sup>1</sup> Tesla could collaborate with others seeking an environmentally safe tire.<sup>2</sup> Goals could include the following:

1. Equivalent safety and performance
2. Full recyclability into new tires
3. Increased durability and reduced tire wear
4. Environmental safety
5. Reduced cost.

**An Urgent Problem**

In 2020, researchers discovered that a tire chemical, 6PPD-quinone (6PPD-Q), was killing 40-90% of pre-spawn adult coho salmon each year in urban streams of the US Pacific Northwest. Acutely toxic to juvenile coho at 95 ng/L, 6PPD-Q is considered "very highly toxic" to aquatic organisms.<sup>3,4</sup>

6PPD protects tire rubber from oxidation and flexing<sup>5</sup>, reacting with ozone at the tire surface to form 6PPD-Q. 6PPD comprises 0.4-2% of tires' mass globally,<sup>6</sup> making 6PPD-Q a ubiquitous pollutant of air,<sup>7</sup> water<sup>8</sup> and soil.<sup>9</sup>

Human health may also be seriously harmed by 6PPD-Q. Tire wear particles enter our food chain and are also inhaled deep into our lungs as fine particulate matter.<sup>10</sup> In a 2022 study, 6PPD-Q was found in the urine of children and adults, with pregnant women having the highest

1 <https://itrcweb.org/teams/active/6ppd-q>

2 <https://itrcweb.org/teams/active/6ppd-q>

3 <https://pubs.acs.org/doi/10.1021/acs.estlett.1c00910>

4 <https://doi.org/10.1016/j.jhazmat.2023.131601>

5

[https://www.ezview.wa.gov/Portals/\\_1962/Documents/6ppd/6PPD%20Alternatives%20Technical%20Memo.pdf](https://www.ezview.wa.gov/Portals/_1962/Documents/6ppd/6PPD%20Alternatives%20Technical%20Memo.pdf)

6 <https://www.science.org/doi/10.1126/science.abd6951>

7 <https://pubmed.ncbi.nlm.nih.gov/34551519/>

8 <https://pubmed.ncbi.nlm.nih.gov/34426371/>

9 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8988306/>

10 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664766/>

concentrations.<sup>11</sup> In 2023, 6PPD-Q was observed to create toxic effects in the livers of laboratory mice.<sup>12</sup>


Unrecognized until 2020, 6PPD-Q was one of the almost 50% of tire leachate chemicals that are still unidentified or have unknown toxicity.<sup>13</sup>

Tire chemicals migrate through solution in water and in tire particles from road wear and recycling.<sup>14</sup> Most recycled U.S. scrap tires are shredded for land application at locations such as children's playgrounds, sport fields, and civil engineering projects including backfill for roads, bridges, retaining walls and septic system drain fields.<sup>15,16</sup>

Experiments with filtering road runoff show limited potential to reduce tire pollution.<sup>17</sup> Redesigning tires is the best solution and may become legally required.<sup>18,19</sup>

#### Why Tesla?

- 1) Tire pollution is an extremely challenging global problem and a risk to Tesla's strategy of using tire-dependent vehicles to accelerate the world's transition to sustainable energy.
- 2) Tesla has the best material scientists in the world<sup>20</sup> and equips them to "be creative and solve engineering problems that have never been solved."<sup>21</sup>
- 3) Tesla's vehicles "are designed to be better in every way,"<sup>22</sup> yet electric cars wear tires faster than gas models due to their greater weight and torque.
- 4) Tesla has experience with first-principles redesign, creating products such as its cobalt-free battery chemistry and 4680 cell.

Deleted: <#>Tires are still outsourced and may yield considerable savings if redesigned in-house. 

Please support Tesla's sustainable, inspiring future by voting for this resolution. Thank you.

11 <https://pubs.acs.org/doi/abs/10.1021/acs.estlett.2c00821>

12 <https://pubmed.ncbi.nlm.nih.gov/36716866/>

13 <https://www.sciencedirect.com/science/article/pii/S0269749123011181>

14 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664766/>

15 <https://www.ustires.org/>

16 [https://archive.epa.gov/epawaste/conserve/materials/tires/web/html/civil\\_eng.html](https://archive.epa.gov/epawaste/conserve/materials/tires/web/html/civil_eng.html)

17 <https://www.sciencedirect.com/science/article/pii/S0045653514014805>

18 <https://earthjustice.org/press/2023/epa-grants-tribal-nations-petition-to-restrict-6ppd-in-tires>

19 [https://dtsc.ca.gov/scp/motor\\_vehicle\\_tires\\_containing\\_6ppd/](https://dtsc.ca.gov/scp/motor_vehicle_tires_containing_6ppd/)

20 <https://ir.tesla.com/webcast-2023-06-19>

21 <https://www.tesla.com/impact>

22 <https://www.tesla.com/impact>