

27 February 2017

Microbeads Consultation

Ministry for the Environment

PO Box 10362

Wellington 6143

Dear Sir

Submission: Microbeads Consultation

1. Water New Zealand appreciates the opportunity to provide a submission on the proposal to ban the use of microbeads in personal care products in New Zealand.
2. Water New Zealand is a not-for-profit organisation that promotes and represents water professionals and organisations. It is the country's largest water industry body, providing leadership and support in the water sector through advocacy, collaboration and professional development. Members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies and scientists.

Introduction

3. The consultation is restricted to the consideration of prohibiting or controlling the manufacture and sale of personal care products containing microbeads in New Zealand through regulations under the WMA. It does not propose to address controls around the importation or exportation of such products, nor does it consider regulation or controls of other products or sources of microplastics.
4. In terms of overall comments, Water New Zealand welcomes any regulation of microbeads in the environment. Water New Zealand supports the Government proposals, but believes the proposed ban under the WMA does not go far enough to ensure these products are not used in New Zealand.
5. Of particular relevance to our sector is the difficulty in removing microbeads from the wastewater stream. Most current treatment systems are not designed to do so and there would be considerable technical and financial costs to develop technology to achieve this new capability. If new discharge consents were to start including bead removal as a requirement this would drive a new level of costs onto ratepayers.
6. As noted in the document, microbeads in personal care products are designed to be washed down the drain so they ultimately end up in wastewater treatment systems. Such systems are not designed to remove microbeads and they ultimately end up in the environment.

7. As Water New Zealand's focus is on the impact of microbeads in the wastewater treatment system most of the consultation questions do not relate to it. The focus is therefore to comment on the appropriateness of promulgating regulations under the Waste Minimisation Act 2008 ('WMA') to address the issue rather than other options, as canvased in the consultation Document and the Regulatory Impact Statement ('RIS').

Scope of Proposals

8. The proposal is to promulgate regulations under the WMA to prohibit or control the manufacture and sale of personal care products containing microbeads. Of note is that there appears to be no such personal care products containing microbeads manufactured in New Zealand, so controlling their manufacture is something of a Clayton's control. Having said this, manufacture of such products may occur in the future so to that extent the proposal could be said to be 'future proofing'.
9. The proposal notes that developing regulations under section 23(1)(b) of the WMA will only prohibit the manufacture and sale of products containing microbeads. They would not prohibit the importation or use of other products containing microbeads in New Zealand. If regulations were developed under the WMA, it is unclear to what extent products containing microbeads would continue to be imported into New Zealand.
10. The proposed regulations would not control the importation or use of personal care products containing microbeads as these matters can only be regulated via the Imports and Exports (Restrictions) Act 1988. The Ministry for Business, Innovation and Employment and the Environmental Protection Authority consider that it is the Import and Exports legislation that should be changed - not the WMA. However, as this change is dependent on changes to the trade environment it may take many years before such change could be made.
11. While Water NZ accepts that changing the WMA is only part of the appropriate response. In reality even if no manufacturing of personal care products ever occurs in New Zealand a ban on selling such products means that they will, in effect, be reduced.
12. Water New Zealand is of the opinion that the Government should provide complete certainty by moving to ban the importation of other products containing microbeads as well. That is, we would support a widening of the definition to include all products containing microbeads.
13. There is no evidence that they are used in any essential product such as medicines. Section 23(1)(b) of the WMA allows for "controls" to be put in place, rather than a blanket prohibition. Controls could set out a general prohibition and provide for exemptions on the grounds of essential or critical uses, if such products are identified.
14. A ban under the WMA would be broadly consistent with the approach taken in other jurisdictions such as the United States, Canada, and the UK. It goes further than the voluntary approach being taken in Australia.
15. As noted in the consultation paper, there are alternative personal care products available on the market, and some manufacturers overseas have indicated that they propose to remove microbeads from their manufacturing process. However a 2015 survey indicated at least 100 products on the market in New Zealand containing microbeads, and not all international manufacturers will remove them from their products.
16. Banning their use is therefore an appropriate response to their demonstrated adverse environmental effects, but the proposed method of banning may be insufficient to prevent their continued import and use via other methods.

Administration and Enforcement

17. The ban on sale of personal care products containing microbeads in New Zealand would not apply to any microbeads products produced in or imported into Australia that may lawfully be sold in Australia, by virtue of Section 10 of the Trans-Tasman Mutual Recognition Act.
18. Section 65(1)(d) of the WMA states it is an offence to “knowingly contravene” regulations made under section 23(1)(b) of the WMA to prohibit manufacture or sale of products. Any person committing an offence is liable for a fine on conviction in court not exceeding \$100,000. The consultation paper expect there to be very few breaches for manufacturing personal care products containing microbeads, as manufacture does not currently take place in New Zealand.
19. However, there may be a considerable number of breaches annually for selling personal care products containing microbeads, most likely from smaller New Zealand retailers. This could be largely avoided by imposing an import ban on all products containing microbeads – including personal care products sold at duty free stores.
20. While we support the proposal to administration and enforcement under the WMA we consider on balance it doesn’t go far enough.

Timeframe

21. While we have gone on record publicly stating that the Government should take immediate action, we recognise that the proposed timeframe is probably appropriate given the time it will take to develop and impose the relevant regulations.
22. If the Government were to amend their proposals to include a ban under the Imports and Exports (Restrictions) Act 1988, then the timeframe proposed would certainly be required.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'J Pfahlert', written in a cursive style.

John Pfahlert
Chief Executive