

Environmental Law Initiative  
Submission:

# Proposal to amend the Cosmetic Products Group Standard 2020



## **ABOUT ELI:**

1. The Environmental Law Initiative (ELI) thanks the Environmental Protection Authority (EPA) for the opportunity to submit on the proposed updates to the Cosmetic Products Group Standard.
2. ELI is a registered charitable trust, whose objective is to support the effective protection of Aotearoa New Zealand's natural environment. We are advised by a small team of experts in environmental law, policy, science, ecology and management.
3. Though operating independently, we partner with a range of other groups and individuals—including iwi, hapū, government agencies, charities, and organisations—to achieve positive outcomes for the environment.
4. In ELI's view, the law is our best tool for effectively protecting the environment. Our research and advocacy are centred around improving legislation and policy to better protect and restore marine, freshwater, and terrestrial environments, and the biodiversity of Aotearoa. For more information, see [www.eli.org.nz](http://www.eli.org.nz)

## **Overview**

5. ELI welcomes the opportunity to submit on the proposal. Our comments are focussed on the proposed phase out of perfluoroalkyl and polyfluoroalkyl substances (PFAS). We are not in a position to comment on the other proposed changes.
6. We support the proposal to phase out PFAS by the end of 2025 at the latest. As noted in the proposal, PFAS display extreme persistence in the environment, and have a potential to bioaccumulate. As reported by MfE in 2018, they can cause reproductive and developmental effects in aquatic organisms, as well as effects on the liver, gastrointestinal track, immune system, reproductive organs and thyroid levels in terrestrial animals.
7. Our submission is limited to:
  - a. requesting that the EPA ensure it is aware of recent research, and
  - b. comments on the requirements of part 2 of the Hazardous Substances and New Organisms Act 1996 (the Act).

### ***Recent research***

8. The EPA's proposal document, in footnotes one to six, refers to publications and research on the effects and occurrence of PFAS. Some of these are from 2018 and 2019. We expect that there will be additional, more recent research on the impacts of PFAS on species and ecosystems, perhaps from a New Zealand perspective. We trust the EPA will review recent literature and ensure that the decision-making committee has access to relevant recent information.

### ***Matters to be considered under Part 2 of the Act.***

9. The purpose of the Act is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms. We agree with the EPA that the proposal to phase out PFAS is consistent with this purpose, and the principles and other matters to be considered in part 2. However, to discharge the obligation to take particular matters into account under sections 6 to 8, and to provide for the principles in section 5, we suggest that the EPA could add additional detail to its reasoning when the proposal is put before the decision-making committee.
10. As an example, under section 5, the EPA must recognise and provide for the safeguarding of the life-supporting capacity of air, water, soil and ecosystems. In our view the life-supporting capacity of water is particularly relevant, given the likelihood of PFAS accumulating in water, the difficulty in removing it, and our reliance on water and aquatic species, for example, for food security. The safeguarding of the life-supporting capacity of ecosystems is also particularly relevant, given the impacts of PFAS on ecosystems and their propensity to bioaccumulate.
11. Under section 5, the EPA must also recognise and provide for the maintenance and enhancement of the capacity of people and communities to provide for their own economic, social, and cultural well-being and for the reasonably foreseeable needs of future generations. An urgent phase out of PFAS from cosmetics is essential to providing for the reasonably foreseeable needs of future generations, given the persistence of PFAS in the environment.

12. Sections 6 to 8 of the Act set out matters which the EPA must take into account. All of the matters in sections 6 to 8 are relevant here. We do not propose to go into each of them in our submission. We would like to raise only one point, relating to section 6(e). Section 6(e) requires the EPA to take into account the economic and related benefits and costs of using a particular hazardous substance. We agree with the EPA that there is already sufficient international evidence to support proceeding with a ban. However, *if* the EPA undertakes an assessment of the economic benefits of allowing the continued use of PFAS in cosmetics, in support of delaying the phase out, then we submit that, in order to discharge this duty, it should equally consider the economic costs of damage and risk to the environment of doing so. While difficult, there are methods for undertaking such assessments. If the EPA decides that it is not possible to undertake such an assessment, then we would expect that the EPA would apply an appropriately high level of caution (as per section 7 of HSNO).
13. Finally, the proposal summary notes that the proposal is consistent with the legislative requirement to take into account the need for caution in section 7 of HSNO. We strongly support this approach. As noted in the proposal, the risk profiles of various compounds differ, and for some there is less certainty.

### ***Final comments***

14. The EPA will be aware of the level of PFAS already found in urban waters in New Zealand.<sup>1</sup> These will have come from cosmetics and elsewhere. We encourage the EPA to phase out PFAS as soon as possible.
15. Restricting PFAS in cosmetics is an important first step. However, as next step in the near future, we would support the EPA in considering phasing out the use of PFAS in other non-essential items.
16. We reiterate our support for this proposal, and thank the EPA for proposing these amendments.

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1. [Occurrence and fate of poly-and perfluoroalkyl substances \(PFAS\) in urban waters of New Zealand](#), SP Lenka, M Kah, LP Padhye, Journal of Hazardous Materials 428, 128257