



- Board of Directors  
*Communications and Legislation Committee*

6/9/2015 Board Meeting

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**8-7**

## **Subject**

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Express support for AB 888 (Bloom, D-Santa Monica) - Waste Management: Plastic Microbeads; and express support for H.R. 1321 (Pallone, D-New Jersey) - Microbead-Free Waters Act of 2015

## **Executive Summary**

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This board letter addresses two bills, one state and one federal, that ban the sale of personal care products containing plastic microbeads. The first bill, AB 888, as amended on April 22, 2015 (**Attachment 1**), prohibits the sale or promotional offering of personal care products containing plastic microbeads by January 1, 2020. Examples of these products include exfoliants, facial scrubs, soaps, and toothpastes. AB 888 exempts products containing less than 1 part per million (ppm) by weight of plastic microbeads. Furthermore, AB 888 creates a civil penalty on sellers of the banned products not to exceed \$2,500 per day for each violation.

The second bill, H.R. 1321, as introduced on March 4, 2015 (**Attachment 2**), amends the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 361) to prohibit the sale or distribution of cosmetics and other personal care products containing plastic microbeads. This ban would go into effect on January 1, 2018, two years earlier than AB 888. Both pieces of legislation recognize the benefit of reducing microplastics pollution by eliminating plastic microbeads from consumer products where viable alternatives exist (i.e., replacing plastic microbeads with natural alternatives).

## **Background**

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Plastic microbeads, as used in personal care products, are designed to be washed down the drain. Because of their small size (less than 0.2 in.), plastic microbeads are not effectively removed by standard wastewater treatment processes. Once released into the environment, plastic microbeads collect in rivers, lakes, and oceans, along with other microplastics, where they can absorb harmful chemicals (e.g., pesticides). Further, the microplastics are then mistaken for food by fish and other wildlife. Once ingested, the toxins accumulate in the tissue of organisms and move their way up the food chain, creating a threat to both natural ecosystems and human health. Environmentally sound alternatives, such as apricot husks, and sand are already widely available, and are used in natural products.

Both AB 888 and H.R. 1321 would address the microbead pollution problem at the source by prohibiting or banning their use in personal care products. AB 888 is sponsored by the California Association of Sanitation Agencies (CASA), Californians Against Waste, and Clean Water Action. The bill is supported by numerous environmental organizations and water and wastewater agencies, including the California Coastkeeper Alliance, Carpinteria Sanitary District, Center for Environmental Health, Central Contra Costa Sanitary District, Central Marin Sanitation Agency, Coachella Valley Water District, Costa Mesa Sanitary District, East Bay Municipal Utility District, Environmental Working Group, Heal the Bay, Las Virgenes – Triunfo Joint Powers Authority, San Francisco Public Utilities Commission, Sierra Club, and Surfrider Foundation. Some industry groups are opposed or have concerns regarding the legislation, which would ban some of their products or constituents on a fixed deadline, and they have been in discussions with the author to resolve their concerns. These include the American Chemistry Council, California Manufacturers and Technology Association, California Retailers

Association, Chemical Industry Council of California, and the Personal Care Products Council. AB 888 passed out of the California Assembly on May 22, 2015 on a 59-12 vote with no spoken opposition.

H.R. 1321 is coauthored by Representatives Frank Pallone and Fred Upton, and is supported by the National Association of Clean Water Agencies (NACWA). The bill was last heard at the House Energy and Commerce Subcommittee on Health on May 1, 2015. Several states, including New Jersey, Colorado, Illinois, Maine, and Maryland have passed legislation supporting the phase-out of microbeads. In addition to California, bills are pending in Michigan, Minnesota, Washington, Oregon, and New York. Many of these state bills still allow for the use of biodegradable plastics, while the California bill would ban synthetic particles and biodegradable plastics that many companies have been developing as alternatives. Several personal care product companies, such as Procter and Gamble, Unilever, and Johnson and Johnson have either pledged to remove the most common microbeads from their products or have already done so. H.R. 1321 is being advanced to provide a national solution to an issue that many states have already began addressing as an environmental and public health priority.

## **Details**

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AB 888 and H.R. 1321 do not directly impact Metropolitan because the requirement is on the manufacturers of personal care products to stop using plastic microbeads. Both bills, however, align with Metropolitan's board-adopted policy principle on source water quality protection and would benefit Metropolitan's member agencies with wastewater treatment or water recycling operations. These bills would protect the Sacramento / San Joaquin Delta, Colorado River, and other watersheds from microbead pollution and mitigate impacts to the aquatic environment.

The U.S. Environmental Protection Agency (USEPA) lacks the regulatory authority under the Clean Water Act to regulate the consumer use of plastic microbeads (that authority rests with the Food and Drug Administration). However, the USEPA could eventually regulate microplastics in wastewater discharges. Common wastewater treatment processes (i.e., settling and biological treatment) cannot effectively remove plastic microbeads, although more advanced treatment with filtration is effective. Upgrading wastewater treatment plants for the sole purpose of removing plastic microbeads would be extremely costly. By removing most microbeads at their source, wastewater and recycled water agencies would not need to potentially modify their wastewater treatment processes prior to discharge or recycling. Both bills thus provide cost-effective source water control and long-term regulatory protection to address a major source of microplastics in the environment.

## **Policy**

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Policy Principle on Source Water Quality Protection – “Support legislation establishing partnership based and/or regulatory-based source water protection programs that are implemented in addition to existing Water Quality requirements....” M.I. 39929, November 10, 1992.

Federal and State Legislative Priorities for 2015-2016– “Support legislation, initiatives and funding to protect and improve water quality from various constituents, including, but not limited to chromium 6, nitrate, perchlorate, salinity, uranium, various fuels, and their additives, pharmaceuticals, personal care products, and other constituents of emerging concern.” M.I. 49980, December 9, 2014.

## **California Environmental Quality Act (CEQA)**

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CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

**Board Options**

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**Option #1**

Adopt the CEQA determination that the proposed action is not subject to CEQA, and

Authorize the General Manager to express support for AB 888 and H.R. 1321.

**Fiscal Impact:** No fiscal impact to Metropolitan.

**Business Analysis:** If passed, these bills would provide source water quality protection by phasing out the use of plastic microbeads in personal care products.

**Option #2**

Take no action.


**Fiscal Impact:** No fiscal impact to Metropolitan

**Business Analysis:** If these bills do not pass, the phase out of plastic microbeads from personal care products may be delayed in California or at the federal level, and there would be no commensurate source water quality protection.

**Staff Recommendation**

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Option #1

	6/2/2015
Dee Zinke	Date
Deputy General Manager, External Affairs	

	6/2/2015
Jeffrey Kightlinger	Date
General Manager	

**Attachment 1 – AB 888, as amended April 22, 2015**

**Attachment 2 – H.R. 1321, as introduced on March 4, 2015**

AMENDED IN ASSEMBLY APRIL 22, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 888**

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**Introduced by Assembly Member Bloom**

February 26, 2015

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An act to add Chapter 5.9 (commencing with Section 42360) to Part 3 of Division 30 of the Public Resources Code, relating to waste management.

LEGISLATIVE COUNSEL'S DIGEST

AB 888, as amended, Bloom. Waste management: plastic microbeads.

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) prohibits any person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without giving a specified warning, or from discharging or releasing such a chemical into any source of drinking water, except as specified. Existing law prohibits the sale of expanded polystyrene packaging material by a wholesaler or manufacturer. Existing law prohibits a person from selling a plastic product in this state that is labeled with the term "compostable," "home compostable," or "marine degradable" unless, at the time of sale, the plastic product meets the applicable ASTM International standard specification.

This bill would prohibit, on and after January 1, 2020, a person, as defined, from selling or offering for promotional purposes in this state a personal care product containing ~~intentionally added~~ plastic microbeads *that are used to exfoliate or cleanse in a rinse-off product*,

## 2

as specified. The bill would exempt from those prohibitions the sale or promotional offer of a product containing less than 1 part per million (ppm) by weight of plastic microbeads, as provided.

The bill would make a violator liable for a civil penalty not to exceed \$2,500 per day for each violation. The bill would authorize the penalty to be assessed and recovered in a civil action brought in any court of competent jurisdiction by the Attorney General or local officials. The bill would require the civil penalties collected in an action brought pursuant to the act to be retained by the office that brought the action.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 5.9 (commencing with Section 42360)  
2 is added to Part 3 of Division 30 of the Public Resources Code, to  
3 read:

4  
5 CHAPTER 5.9. PLASTIC MICROBEADS NUISANCE PREVENTION  
6 LAW  
7

8 42360. The Legislature finds and declares all of the following:

9 (a) Plastic does not biodegrade into elements or compounds  
10 commonly found in nature like other organic materials, but, instead,  
11 upon exposure to the elements photodegrades into smaller pieces  
12 of plastic causing land and water pollution that is virtually  
13 impossible to remediate.

14 (b) Plastic pollution is the dominant type of anthropogenic debris  
15 found throughout the marine environment.

16 (c) Plastic pollution is an environmental and human health  
17 hazard and a public nuisance.

18 (d) Microplastics that are five millimeters or less in diameter  
19 become bioavailable as soon as they enter the marine environment  
20 and are ingested by marine organisms.

21 (e) Microplastics are persistent organic compounds that attract  
22 other pollutants commonly present in the environment, many of  
23 which are recognized to have serious deleterious impacts on human  
24 health or the environment, including DDT, DDE, PCBs, and flame  
25 retardants.

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1 (f) PAHs, PCBs, and PBDEs from plastic transfer to fish tissue  
2 when ingested and bioaccumulate.

3 (g) Fish that humans consume have been found to ingest  
4 microplastics, which are then ingested by the humans who consume  
5 these fish.

6 (h) Consumer personal care products such as facial scrubs,  
7 soaps, and toothpaste increasingly contain thousands of  
8 microplastics in the form of plastic microbeads that are flushed  
9 down drains or make their way into the environment by other  
10 means as part of their intended use.

11 (i) Plastic microbeads in personal care products are generally  
12 not recoverable through ordinary wastewater treatment and can  
13 be released into the environment.

14 (j) Plastic microbeads have been found in surface waters within  
15 the United States, as well as in fish, marine mammals, reptiles,  
16 mussels, and worms.

17 (k) There are economically feasible alternatives to plastic  
18 microbeads used in personal care products, as evidenced by the  
19 current use of biodegradable, natural, abrasive materials in personal  
20 care products such as beeswax, shells, nuts, seeds, and sand.

21 42361. As used in this chapter, the following terms have the  
22 following meanings:

23 (a) “~~Natural Exfoliant~~” *exfoliant*” means a substance occurring  
24 in and generated by the natural environment and includes, but is  
25 not limited to, the following substances: walnut shells, apricot  
26 hulls, sand, clay, or beeswax.

27 (b) “Person” means an individual, business, or other entity.

28 (c) (1) “Personal care product” means an article intended to  
29 be rubbed, poured, sprinkled, or sprayed on, introduced to, or  
30 otherwise applied to, the human body or any part thereof for  
31 cleansing, beautifying, promoting attractiveness, or altering the  
32 appearance, and an article intended for use as a component of that  
33 type of article.

34 (2) “*Personal care product*” does not include a prescription  
35 drug, as defined in Section 110010.2 of the Health and Safety  
36 Code.

37 (d) “Plastic microbead” means an intentionally added *solid*  
38 plastic particle measuring five millimeters or less in every  
39 dimension.

## 4

1 42362. On and after January 1, 2020, a person shall not sell or  
2 offer for promotional purposes in this state any personal care  
3 products containing plastic microbeads *that are used to exfoliate*  
4 *or cleanse in a rinse-off product, including, but not limited to,*  
5 *toothpaste.*

6 42363. Section 42362 shall not apply to either of the following:

7 (a) A person that sells or offers for promotional purposes a  
8 personal care product containing plastic microbeads in less than  
9 1 part per million (ppm) by weight.

10 (b) A product containing natural exfoliants that does not contain  
11 plastic microbeads.

12 42364. (a) A person who violates or threatens to violate Section  
13 42362 may be enjoined in any court of competent jurisdiction.

14 (b) (1) A person who has violated Section 42362 is liable for  
15 a civil penalty not to exceed two thousand five hundred dollars  
16 (\$2,500) per day for each violation in addition to any other penalty  
17 established by law. That civil penalty may be assessed and  
18 recovered in a civil action brought in any court of competent  
19 jurisdiction.

20 (2) In assessing the amount of a civil penalty for a violation of  
21 this chapter, the court shall consider all of the following:

22 (A) The nature and extent of the violation.

23 (B) The number of, and severity of, the violations.

24 (C) The economic effect of the penalty on the violator.

25 (D) Whether the violator took good faith measures to comply  
26 with this chapter and when these measures were taken.

27 (E) The deterrent effect that the imposition of the penalty would  
28 have on both the violator and the regulated community as a whole.

29 (F) Any other factor that justice may require.

30 (c) Actions pursuant to this section may be brought by the  
31 Attorney General in the name of the people of the state, by a district  
32 attorney, by a city attorney, or by a city prosecutor in a city or city  
33 and county having a full-time city prosecutor.

34 (d) Civil penalties collected pursuant to this section shall be  
35 paid to the office of the city attorney, city prosecutor, district  
36 attorney, or Attorney General, whichever office brought the action.

37 42366. This chapter does not alter or diminish any legal  
38 obligation otherwise required in common law or by statute or  
39 regulation, and this chapter does not create or enlarge any defense  
40 in any action to enforce the legal obligation. Penalties and sanctions

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- 1 imposed pursuant to this chapter shall be in addition to any
- 2 penalties or sanctions otherwise prescribed by law.



114TH CONGRESS  
1ST SESSION

# H. R. 1321

To prohibit the sale or distribution of cosmetics containing synthetic plastic  
microbeads.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 2015

Mr. PALLONE (for himself and Mr. UPTON) introduced the following bill;  
which was referred to the Committee on Energy and Commerce

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## A BILL

To prohibit the sale or distribution of cosmetics containing  
synthetic plastic microbeads.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Microbead-Free  
5 Waters Act of 2015”.

1 **SEC. 2. PROHIBITION AGAINST SALE OR DISTRIBUTION OF**  
2 **COSMETICS CONTAINING SYNTHETIC PLAS-**  
3 **TIC MICROBEADS.**

4 (a) IN GENERAL.—Section 601 of the Federal Food,  
5 Drug, and Cosmetic Act (21 U.S.C. 361) is amended by  
6 adding at the end the following:

7 “(g) If it contains synthetic plastic microbeads.”.

8 (b) APPLICABILITY.—The amendment made by sub-  
9 section (a) applies beginning on January 1, 2018.

○