

**Testimony of Commissioner Julie Menin
New York City Department of Consumer Affairs
Before the
New York City Council Committee on Consumer Affairs**

Hearing on

Introduction 928: Regarding the Ban on Personal Care Products that Contain Microbeads

October 26, 2015

Introduction

Good morning Chairman Espinal, Council Member Garodnick, and members of the Committee on Consumer Affairs. I am Julie Menin, Commissioner of the Department of Consumer Affairs (“DCA”), and I am joined by my colleagues Amit Bagga, Deputy Commissioner of External Affairs, Mary Cooley, Director of City Legislative Affairs, Alba Pico, our First Deputy Commissioner, and Tamala Boyd, Deputy General Counsel. Thank you for inviting us to testify on Introduction 928 (“Intro 928”), which would ban the sale of personal care products that contain microbeads.

As my colleagues from the Department of Environmental Protection (“DEP”) have testified, microbeads, which are small plastic beads added to cosmetic and personal care products such as facial scrubs, body washes, toothpaste, soaps, and shampoos, can be harmful to marine life, to human health, and to the environment at large. A report issued by the New York State Attorney General just last year estimated that approximately 19 tons of microbeads are washed into New York State’s waterways annually,¹ and as you have heard, our wastewater treatment system is ill-equipped to mitigate the harmful impact of microbeads on our environment and food systems.

Ending the sale of products with microbeads is aligned with DCA’s core mission to protect New York City’s consumers, and we fully support the intent of Intro 928. As the committee is aware, DCA has also been fully supportive of legislation that protects the City’s environment, evidenced by our robust enforcement of the “A/C” bill, and our advocacy for the recent expansion of the existing law requiring certain types of businesses to keep their doors closed while the air conditioning is on.

The importance of removing microbeads from products cannot be understated. As nine other states, as well as the country of Canada, have already passed legislation to end the manufacturing of products with microbeads, it is clear that the threat posed by microbeads to our environment is indeed serious. While DCA commends the goal of Intro 928, DCA – and our City’s businesses – will face significant challenges with respect to the enforcement of and compliance with this bill as it is currently written, and we recommend revisions to the bill that would address key obstacles.

¹ http://ag.ny.gov/pdfs/Microbeads_Report_5_14_14.pdf

Effective Date

The bill in its current form would ban the sale of personal care products containing microbeads starting just two months from now – on January 1, 2016. Considering the amount of time retailers both large and small would need to assess which products in their existing and pre-ordered inventories contain microbeads, and the expenses they have likely already incurred to order these products, much more time is needed to allow for retailers to eliminate products with microbeads from their stock and for retailers to become educated about a new law. While DCA appreciates that placing the responsibility of not selling products with microbeads on retailers might facilitate the phasing out of such products from New York City’s market, retailers are ultimately not manufacturers, who should more appropriately bear the burden of eliminating microbeads from the products they manufacture.

Indeed, many major manufacturers of such products are already responding to microbead bans now in place in many jurisdictions by beginning the process of eliminating them. California, Connecticut, Indiana, Maine, Colorado, Wisconsin, Maryland, and Illinois have all banned both the sale and manufacture of products with microbeads, with their bans on manufacturing not taking effect until early 2018 and bans on the sale not going into effect until 2019 at the earliest. Presumably, these timetables have been deemed sufficient by legislatures around the country to allow for manufacturers to phase microbeads out from products, and so banning the sale of such products in New York City as of January 2016 places an undue, extremely heavy burden on New York City’s retailers, many of which are small businesses. The severity of the fine structure proposed in this legislation, which is significantly higher than DCA’s standard fine structure, only further exacerbates this burden.

In order to allow for sufficient time for retailers, who have no power over the manufacturing processes of the products they sell, to comply with a ban, DCA recommends the consideration of an effective date of January 1, 2017, which is still two full years earlier than similar bans of the sale of microbead-containing products enacted by other jurisdictions.

In addition to our concerns regarding the effective date, DCA has significant concerns about the agency’s ability to enforce the bill as it is currently written.

Enforcement

DCA’s enforcement concerns are based primarily on two factors: the first is the ability of our inspectors to unambiguously identify which products contain microbeads and the second is their ability to actually inspect the dozens, and sometimes hundreds, of personal care products that are on the shelves of thousands of retailers across the City.

The agency’s inspectors would need an accurate, comprehensive list of chemicals designated as “plastic microbeads” to ensure all products with the banned microbeads can be identified on product packaging. Such a list could be developed by a sister City agency, such as DEP or perhaps the Mayor’s Office of Sustainability (“MOS”), or perhaps by a state or federal agency. This list would then have to be likely adopted by rule, not code, so it can easily be amended to keep up with changing formulations used by manufacturers. Absent such a list, our inspectors

would not be able to unambiguously identify which products contain microbeads, and, as such, would be unable to conduct enforcement.

The bill in its current form would require our inspectors to inspect as many as 14,000 retailers in New York City, as there are approximately 600 chain pharmacy locations and over 13,000 “food retail stores,” a category that includes grocery stores, convenient stores, bodegas, delis, and gas stations. At many such retailers, our inspectors would have to inspect potentially hundreds of products – from cleansers to shampoos to toothpaste to soaps – to determine whether or not these products contain any of the banned chemicals considered to be microbeads. Such an inspection could potentially require hours of an inspector’s time, and considering that DCA already has the responsibility of inspecting tens of thousands businesses across the five boroughs every year, enforcement of this type would simply not be possible without the infusion of significant resources.

DCA proposes that in addition to extending the effective date to 2017, that the committee consider limiting the number of products that an inspector must assess, while ensuring that a wide variety of products are assessed. For example, an appropriate and effective analog could be Suffolk County’s approach to enforcement. That law requires that the county’s Department of Health Services, which is responsible for enforcement, to “select no more than 10 personal care products for inspection for microbeads.” Such an approach to enforcement will be significantly more efficient and we could ensure effectiveness by requiring inspectors to inspect different types of products.

Conclusion

The threat that microbeads pose to human health, marine life, and the environment is clear. There is no question that they should be eliminated from all products as quickly and efficiently as possible.

Banning the sale of products with microbeads is a potentially useful method to encourage the personal care product industry to eliminate them from products, and any such ban needs to be designed in a way that allows for efficient and effective enforcement. The ban must, of course, also not be considered pre-empted by state or federal law, an issue that the City’s Law Department is currently reviewing.

I look forward to discussing with you changes to Intro 928 that will enable the City to protect its environment while ensuring that businesses can comply with the law. Thank you for the opportunity to testify today; I’ll be happy to take any questions at this time.