



April 5, 2023

Honorable Bauer-Kahan  
California State Assembly  
1021 O Street, Ste. 6320  
Sacramento, CA 95814

Re: **AB 234- Microparticles in Products- Letter of Concern**

Assemblymember Bauer-Kahan:

On behalf of the undersigned organizations, we appreciate your authorship of Assembly Bill 234, however, we must inform you of our concerns with some aspects of the language. All the organizations, and their member companies, are concerned with the impacts of synthetic polymer microparticles in our environment. In addition, there are innovation programs in operation to replace ingredients deemed synthetic polymer microparticles. We believe there is an opportunity to eliminate intentionally added microparticles from cleaning products, waxes and polishes and personal care products, if given the opportunity and pathway necessary to innovate and to provide quality products that improve the lives of Californians. With a few exceptions, AB 234 is close to establishing a workable solution, while also recognizing the need to protect the environment and public health.

### **Scope of Microparticles**

While we appreciate the consumer products targeted in AB 234 may contain synthetic polymer microparticles as defined, it is worth noting, they are an extremely small contributor to the overall scope of these materials found in the environment. Nonetheless, our organizations are committed to taking meaningful steps to support the environment and public health, Importantly, we are not seeking continued use, rather we are seeking internationally recognized testing standards to enable the use of next generation biodegradable microparticles.

### **European Union Alignment**

Industry stakeholders, NGOs, academics, and regulators have been working in the European Union (EU) for more than seven years as the EU's regulatory body has drafted and revised their "Synthetic Solid Polymer Microparticle" restriction. While the draft EU regulation will pose significant compliance challenges, it includes a reasonable pathway with compliance timelines that allow industry to research and develop alternatives to synthetic polymer microparticles. **We recognize and appreciate your commitment to harmonize AB 234 with what the EU has drafted, however, we respectfully ask you to not move AB 234 to the Governor's desk until after the EU regulation is officially adopted to**

**ensure alignment.**

### **Biodegradable Standard**

Biodegradation is an advanced science that can be applied to evaluate the persistence of microparticles and has been leveraged for decades to inform development of materials for use in many products and applications that improve quality of life such as detergents, personal care products, agrochemicals, and pharmaceuticals. The EU built into their microparticles regulation a biodegradation derogation such that truly biodegradable materials are not captured under the restriction. The biodegradable exemption in AB 234, which aligns with the EU regulation, coupled with the internationally recognized test methods required to demonstrate biodegradability, will foster innovation toward more sustainable biodegradable polymers.

The European Chemicals Agency (ECHA) drafted the biodegradation derogation for the EU synthetic polymer microparticles restriction because they recognized if a material completely mineralizes (ultimate biodegradation) at a rapid pace in the environment, relevant environmental concerns are negated. The standardized test methods and pass criteria proposed by ECHA were fine-tuned through a rigorous public process with input from academia, regulatory agencies, NGOs, and industry. The resulting derogation outlines a comprehensive test scheme, included in AB 234, to ensure that any exemption must be scientifically based.<sup>1</sup>

We respectfully request technical amendments in AB 234 to align with the most recent version of the draft EU regulation, including updated International Organization for Standardization (ISO) references.

### **Solubility Standard**

Like the biodegradation standard, the solubility derogation in the EU regulation was included for materials which dissolve at a rapid pace in water. However, since the language in section 42359.05 (c)(5) (A) and (B) is inconsistent with the current EU draft, we it be deleted.

Furthermore, the EU is considering a particular pass criteria (>2 g/L) that, if adopted, should be included in the required conditions for the solubility test.

### **Enforcement**

Finally, we respectfully request the enforcement mechanism in the bill align with recent consumer product regulations adopted in AB 1287 (2022) related to pricing restrictions. As currently drafted, companies would be potentially vulnerable to multiple and redundant legal actions over the same violation. This issue should remain within the exclusive jurisdiction of the State Attorney General.

Thank you for your consideration of these comments. If you have any questions, please feel free to contact Nicole Quinonez [Nicole@mqadvocacy.com](mailto:Nicole@mqadvocacy.com) or Mandy Lee at [mandy@omnigr.com](mailto:mandy@omnigr.com) or any of the organizations listed below.

We look forward to working with you on this important legislation.

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<sup>1</sup> Assessment and Committee for Socio-Economic Analysis Background Document to the Opinion on the Annex XV Report Proposing Restrictions on Intentionally Added Microplastics. <https://echa.europa.eu/documents/10162/b56c6c7e-02fb-68a4-da69-0bcbd504212b>

*On behalf of the following organizations:*

Tim Shestek, American Chemistry Council

Adam Regele, California Chamber of Commerce

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