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March 23, 2015

MEMORANDUM OF OPPOSITION S.4403 (O'Mara)

Summary of Legislation

The stated purpose of the bill is to prohibit the manufacture and sale of products containing plastic microbeads in order to reduce plastic pollution in the waters of New York State that pose harm to humans, fish and wildlife. The legislation adopts a narrow and difficult-to-enforce definition of microbeads, an extended phase in period, and a broad preemption of local laws.

Statement in Opposition

The stated goal of this bill is to “prevent the continued use of microbeads in order to protect our aquatic environments, wildlife and public health,” a goal which Buffalo Niagara RIVERKEEPER strongly supports. However, this goal is unlikely to be achieved by **S.4403** because this legislation includes a number of provisions that will significantly undermine its enforceability. As a result, Buffalo Niagara Riverkeeper is strongly opposed to **S.4403**, which we understand is based on an industry crafted bill that is intentionally designed to undermine legislative efforts to ban microbeads nationwide.

At the heart of this legislation is deliberately ambiguous language regarding “biodegradability” that makes this microbead ban unenforceable. From the legislation’s definitions section:

*4. the term “synthetic plastic microbead” shall mean any intentionally added **non-biodegradable** solid plastic particle measured less than five millimeters in the size and is used to exfoliate of cleanse in a rinse-off product.*

S.4403 does not provide a definition for “non-biodegradable” nor does the existing Environmental Conservation Law contain a helpful standard by which to guide the bill’s implementation. The ambiguity of what constitutes biodegradability in S.4403 arguably makes every microbead exempt from this legislation.

In addition, the preemption language in **S.4403** would prevent any locality from enacting local bans on micro bead based products as an alternative to the ineffective state law. Due to the significant scientific evidence of microbead contamination in Lake Erie and other Great Lake communities, the Erie County Legislature demonstrated unanimous support on January 22, 2015, when they passed a resolution supporting **A.5896/ S.3932**.

S.4403 is not the kind of legislation that Western New York State residents expect in order to protect their public trust resources.

Buffalo Niagara Riverkeeper strongly urges the Senate to reject S.4403 and continue support for A.5896/ S.3932 as the only viable legislative strategy to protect New York waters and our Great Lakes from microbead pollution.

