

Microplastics

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Microplastics

- There is no single, universally accepted definition of ‘microplastics.’ Definitions vary by jurisdiction, regulatory context, and scientific discipline, and continue to evolve.
- They are the result of degradation of larger plastic items, intentionally manufactured such as microbeads in cosmetics, or microfibers from synthetic textiles, wear and tear
 - Recent microplastics research indicates that microplastics are ubiquitous in our environment—including in our air and water. As one court recently summarized, “Microplastics are everywhere.”
- As the [US FDA recently explained](#), “[B]ecause there are no standardized methods for how to detect, quantify, or characterize microplastics and nanoplastics, many of the scientific studies have used methods of variable, questionable, and/or limited accuracy and specificity.”
 - In other words, one study might consider a product “free of microplastics” or low in microplastics, whereas another study might claim to identify thousands of microplastics in that same product.

Limited Federal Landscape

- In 2015, Congress passed the Microbead-Free Waters Act of 2015 to prohibit the use of tiny plastic beads (microbeads) in rinse-off cosmetic products.
- The Microplastics Safety Act (H.R.4486) was introduced in **July 2025** by federal lawmakers to require FDA to study and report on the major pathways of human exposure to microplastics in food and water, and whether these exposures impact human health. The bill has been referred to the House Committee on Energy and Commerce.

Make America Healthy Again Commission (“MAHA”)

- In February 2025, President Trump signed Executive Order 14212, which established the President’s Make America Healthy Again Commission.
 - Pursuant to this mandate, the Commission released “The MAHA Report,” in May 2025
- The MAHA Report, identifies the “aggregation of environmental chemicals” as one of the potential drivers of childhood chronic disease and **describes microplastics** as “endocrine-disrupting chemicals” that can interfere with hormones, trigger early puberty, and “heighten the risk of obesity, infertility, and hormone-related cancers.”
 - The MAHA Report provides no specific policy recommendations related microplastics.
- The Executive Order required the MAHA Commission to provide a “Make Our Children Healthy Again Strategy” based on the MAHA Report by **August 12, 2025**.
 - The MAHA Commission delivered policy recommendations to President Donald Trump on Aug. 12, 2025, and released its report to the public on Sept. 9, 2025.
 - The Strategy directs the HHS, in collaboration with the NIH and EPA, to complete an evaluation of the risks associated with exposure to microplastics and synthetics, including via textiles.

EPA, HHS & Drinking Water

On April 2, 2026, EPA and HHS announced “Historic Actions to Protect Americans from Microplastics and Safeguard Drinking Water”

- The Press Release notes that the “Joint initiative marks first-ever inclusion of microplastics on EPA's Contaminant Candidate List and launches groundbreaking ARPA-H program to detect and remove plastics from the human body”
- Specifically, Advanced Research Projects Agency for Health (ARPA-H) “announced the launch of STOMP—Systematic Targeting of Microplastics—a first-of-its-kind nationwide initiative to build a comprehensive toolbox for measuring, researching, and removing microplastics and nanoplastics (MNPs) from the human body.” Per the press release, “STOMP takes a three-pronged approach:
 - Measure: Deploy gold-standard detection technology to accurately quantify microplastics levels in water and human tissue.
 - Target: Identify the most harmful plastic contaminants and determine how they enter and move through the body.
 - Remove: Develop and validate methods to eliminate microplastics from the human body.”

Microplastics in the States



California Department of Toxic Substances Control (DTSC) has initiated a rulemaking to add microplastics to its Candidate Chemicals List

- This includes both intentionally manufactured microplastics and those fragmented from larger plastics
- No immediate compliance requirements but signals DTSC will regulate certain Priority Products that contain or generate microplastics
- No Prop 65 listing.... yet

Microplastics in the States



Failed Microplastics Legislation in 2025

- **California: AB 823** – bill to prohibit personal care products containing plastic microbeads used to exfoliate or cleanse in a rinse-off product and those containing plastic glitter; Governor Newsom vetoed
- **Minnesota: SF 1389** – bill to require a study of the presence of microplastics in meat and poultry products
- **Rhode Island: S 0406 and H 5492** – bill to prohibit the sale of products containing synthetic polymer microparticles
- **Vermont: H.345** – bill to prohibit the sale or distribution of glitter containing intentionally added synthetic polymers

Microplastics Litigation Examples



BPA free

WaterWipes Litigation

Three lawsuits have been filed against WaterWipes (2 class actions; 1 under D.C. Consumer Protection Act)

- ***Merlo v. WaterWipes (USA) Inc.*, No. 3:25-cv-04640 (N.D. Cal. filed June 2, 2025)** As of March 15, the case is stayed for another 90 days for mediation.
- ***Bregvadze v. WaterWipes (USA), Inc.*, No. 7:25-cv-02586, (S.D.N.Y. filed: March 28, 2025).** In discovery.
- ***Toxin Free USA v. Water Wipes (USA) Inc.* (D.C. Super. Ct. filed March 28, 2025).** In discovery.

Allegations: It is deceptive to make “plastic-free” , “pure” , “safe” and other claims because the products allegedly contain microplastics

The complaints rely on third-party lab testing that allegedly revealed presence of microplastics.



On Pack Claims

“plastic-free”

“just 2 ingredients”

The wipes are “the world’s purest baby wipes”

Kirkland BabyWipes Litigation

Two lawsuits were filed against Costco (1 class action; 1 under D.C. Consumer Protection Act) for claims on its Kirkland BabyWipes. Both cases are in discovery.

- ***Toxin Free USA v. Costco Wholesale Corporation*, No. 2025-CAB-003307 (D.C. Super. Ct. filed May 23, 2025).**
- ***Rosewood v. Costco Wholesale Corp.*, No. 1:25-cv-02892 (E.D.N.Y. filed May 23, 2025)**

Allegation: It is deceptive to make “plastic-free, pure, and safe” and other claims because the products allegedly contain microplastics

The DC complaint relies on third-party lab testing that allegedly revealed presence of microplastics



On Pack Claims
“plastic-free”, “made with naturally derived ingredients” and “helps maintain healthy skin”

Poland Spring Litigation



Slowinski v. BlueTriton, 24-cv-513 (N.D. Ill. Aug 9, 2024)

Allegation: "100% Natural Spring Water" was misleading because the water allegedly contained microplastics.

- MTD Granted - The court held: Plaintiffs' claims were preempted ; FDCA defines "spring water"
- Reasonable consumer does not expect molecular purity.

Microplastics – Heated Plastics



Miller et al. v. Philips North America LLC, No. 3:24-cv-03781 (N.D. Cal. filed 2024)

Allegations:

- Bottles allegedly leached dangerous microplastics when the bottles are heated, and that Defendant knew the bottles would be heated in their regular use
- “BPA Free” claim misleading because consumers think it means free of all microplastics.
- Partial grant of MTD
- Plaintiff filed 2nd Am. Compl on March 13. Defendant has answered, so likely to proceed to litigation.

Advertisers - Proceed with Caution & Consider the Context of Advertising

- Advertisers are responsible for all reasonable interpretations of a claim
- In the US, the “reasonable consumer” standard is applied, which means if a reasonable consumer could interpret a claim to mean X, the advertiser must have substantiation for X
- If you are an advertiser, exercise care when making claims such as “plastic free”; “BPA Free” ; “natural” ; “pure”; “microwave and freezer safe”; “health” and related claims since Plaintiffs’ lawyers have asserted false advertising claims based on such representations arguing these claims allegedly convey to consumers that a product is free of microplastics.