

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 818 (Bloom) – As Introduced February 16, 2021

SUBJECT: Solid waste: premoistened nonwoven disposable wipes

SUMMARY: Requires labels indicating that a product should not be flushed on specified nonwoven disposable products, establishes enforcement provisions, and establishes a consumer education and outreach program. Specifically, **this bill:**

- 1) Requires covered nonwoven disposable wipes, by July 1, 2022, to be labeled clearly and conspicuously to communicate that they should not be flushed, and prescribes specified "Do Not Flush" symbols, size, and location requirements for the label.
- 2) Defines a covered product as a consumer product sold in the state or offered for sale in the state that is either a premoistened nonwoven disposable wipe marketed as a baby wipe or diapering wipe, or a premoistened nonwoven disposable wipe that is both composed entirely of or in part of petrochemical-derived fibers and is likely to be used in a bathroom and has significant potential to be flushed, including baby wipes, bathroom cleaning wipes, toilet cleaning wipes, hard surface cleaning wipes, disinfecting wipes, hand sanitizing wipes, antibacterial wipes, facial and makeup removal wipes, general purpose cleaning wipes, personal care wipes for use on the body, feminine hygiene wipes, adult incontinence wipes, adult hygiene wipes, and body cleansing wipes.
- 3) Prohibits a covered entity, a manufacturer of a covered product, from making a representation about the flushable attributes, benefits, performance, or efficacy of those premoistened nonwoven disposable wipes, as provided.
- 4) Establishes enforcement provisions.
- 5) Provides that enforcement actions may be brought by the Attorney General, by a district attorney, by a city attorney, a county counsel, or by a city prosecutor in a city or city and county having a full-time city prosecutor.
- 6) Stipulates that these provisions supersede and preempt all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the labeling of covered products.
- 7) Establishes a consumer education and outreach program, as specified, and sunset the consumer outreach program on December 31, 2026.
- 8) Requires covered entities to report to the Senate Committee on Environmental Quality, the Assembly Committee on Environmental Safety and Toxic Materials Committee, and the State Water Resources Control Board (State Water Board) on their activities on an annual basis.
- 9) Sunsets the bill on January 1, 2027.

EXISTING LAW:

Under federal guidelines:

- 1) Defines biodegradability and requires environmental marketing claims and claims of degradability, biodegradability, and photodegradability be qualified to the extent necessary to avoid consumer deception about the product or package's ability to degrade in the environment where it is customarily disposed and the rate and extent of degradation. (Federal Trade Commission (FTC), Green Guide Part 260 § 260.8)
- 2) Regulates the labeling requirements on various consumer products and requires any person who represents in advertising or on the label or container of a consumer good that the product is not harmful to, or is beneficial to, the natural environment, through the use of terms such as "environmental choice," "ecologically friendly," "earth friendly," "environmentally friendly," "ecologically sound," "environmentally sound," "environmentally safe," "ecologically safe," "environmentally lite," "green product," or any other like term, to maintain in written form in its records specified information and documentation supporting the validity of the representation. (FTC, Green Guide Part 260 § 260.4)

Under state law:

- 1) States that it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of plastic products. Provides that for consumers to have accurate and useful information about the environmental impact of plastic products, environmental marketing claims should adhere to uniform and recognized standards, including those standard specifications established by the American Society for Testing and Materials. (Public Resources Code § 42355.5)
- 2) Provides that it is unlawful for a person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. (Business and Professions Code (BCP) § 17580.5 (a))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "When wet wipes products are flushed into the sewer system they can cause significant issues for private property owners, sewer collection systems, and wastewater treatment plants. Wet products that do not break down can catch on tree roots or other obstructions in residential sewer laterals and cause costly and dangerous backups for property owners. Wet wipes have been shown to cause significant damage to residential septic systems, resulting in expensive repairs and remediation for homeowners."

What does "flushable" mean? Generally, toilet paper is universally considered flushable due to the nature of its use as well as the design of the product to disperse upon being flushed. However, there currently is no federal or state definition of what constitutes a "flushable" consumer product.

As a result, companies have used their own definitions and methods to determine the flushability of their products. For consumers and wastewater agencies, this means there has been no single reference from which to assess the flushability of a product other than the marketing claim on a package.

Flushable products: This lack of standardization, or regulation, has led to consumer confusion and lack of clarity in the market place as to the appropriateness of disposing certain products via plumbing systems.

In the 1980s, wipes advertised as "flushable" first appeared on the market. Since then, two types of flushable wipes have been designed and introduced: dispersible and low-strength wipes. Low-strength has been one approach to making nonwovens with permanent bonds flushable. These wipes collapse in a toilet, presenting a very small profile and the flexibility to travel through pipes unencumbered. However, their low wet strength makes them poor performers in most cleaning jobs. The second type of flushable wipe is dispersible. These products perform like a standard wipe as far as strength and softness, but in a toilet disperse into individual fibers or small groups of fibers.

More and more, an increasingly diverse range of disposable products has become available for consumer use. The growth of the market for such products is evidence of their popularity with the public, but their increased use brings with it discussion about their disposal, especially the topic of flushability.

For disposable products that address public health and hygiene considerations, consumers often mistakenly use the wastewater system as a preferred means of disposal. These products include disinfectant wipes and baby wipes (which are often confused with "flushable" wipes), feminine hygiene products, diapers, diaper liners, dog poop bags, wash cloths, condoms, and more. While consumer behavior cannot be legislated, legislation can steer manufacturing and labeling in a direction that better informs consumers how to behave. In the case of this bill, the intent is to better inform consumers about wipes suitable for flushing.

Problems with nonflushable products: Products that are poorly designed or not at all intended to be flushed down the toilet can cause sewer blockages, which damage sewer lines and can lead to costly sanitary sewer overflows. Damage and overflows present dangers to public health and the environment.

A buildup of nonflushable products has been shown to cause clogs in sewage pumps, lead to entanglements in sewage treatment equipment, lead to sewer backups in residences, and increase the risk of a sanitary sewer overflow during a storm.

Wipes weave together and form large "rags" that can become massive obstructions in sewer lines when they combine with other improperly flushed items and fats, oils, and greases. These obstructions are commonly referred to as "fatburgs," and in addition to being a disgusting environmental problem, local agencies spend significant time and resources to remediate them. In the worst cases, fatburgs attributed to wipes contribute to sanitary sewer overflows, which are a threat to public health and the environment, and result in fines and penalties to public agencies.

The increased maintenance needed to prevent problems from products that should not be flushed is very costly to public wastewater agencies. Many of the sanitation agencies are finding wipes are the main culprit of the problem. In some cities, such as Petaluma, costly screening facilities

have failed to stop these indispersible products from finding their way through the wastewater system.

In 2011, the Orange County Sanitation District (OCS D) conducted nearly 1,000 preventative or corrective de-ragging maintenance calls on 10 of their 15 regional pump stations. The total labor cost for these actions was more than \$300,000. OCS D continues to spend labor hours to avoid clogging that could lead to a sewer spill. Their crews routinely remove non-dispersables from their three hardest hit stations every Monday and Thursday. On August 13, 2012, the equivalent of 40 large trash bags on non-dispersable materials overburdened their new headworks and completely plugged three new washer compactors. It took six to eight hours and up to 10 plant employees to restore normal operations. The OCS D notes that operations and maintenance costs are going up. Spending more public agency money to reengineer the problem away by installing new machinery is not a sustainable solution.

A pandemic makes everything worse: Following Governor Newsom's COVID-19 Stay-At-Home order (Executive Order N-33-20, enacted on March 19, 2020), consumer panic buying and subsequent shortages of toilet paper resulted in the increased flushing of alternatives like baby wipes and other non-flushable debris. As a result, local officials reported a large spike in non-flushable debris in sewer systems last spring, resulting in significant and costly operational impacts. Wastewater operators in Redding, San Clemente, Orange County, Lakeport, Victorville, Beale Air Force Base, Napa, Cupertino, Tiburon, Marin, and San Diego reported wipes clogging sewage systems.

State Water Board Advisory regarding Flushing Wipes and COVID-19: In March 2020, the State Water Board issued an advisory, warning the public not to flush disinfecting wipes down the toilet:

"Flushing wipes, paper towels and similar products down toilets will clog sewers and cause backups and overflows at wastewater treatment facilities, creating an additional public health risk in the midst of the coronavirus pandemic. Even wipes labeled "flushable" will clog pipes and interfere with sewage collection and treatment throughout the state.

"Wastewater treatment facilities around the state already are reporting issues with their sewer management collection systems. These facilities are asking state residents to not discard wipes in the toilet, but instead to throw them in the trash to avoid backups and overflow. A majority of urban centers are on centralized sewage collection systems depend on gravity and enough water flow to move along human waste and biodegradable toilet paper. The systems were not designed for individual nylon wipes and paper towels. The wipes do not break down like toilet paper, and therefore clog systems very quickly.

"Wipes are among the leading causes of sewer system backups, impacting sewer system and treatment plant pumps and treatment systems. Many spills go to our lakes, rivers, and oceans where they have broad ranging impacts on public-health and the environment. Preventing sewer spills is important, especially during this COVID-19 emergency, for the protection of public health and the environment."

Establishing a workable flushable standard for flushable wipes: While there is not yet a regulatory standard for what is allowable to be flushed, there are both industry and water

association standards that have used rigorous testing and engineering assessments to define "flushability."

Last session, the Legislature considered AB 1672 (Bloom) to discern which guidance would be best to inform how to legislate "flushability." Stakeholders including the California Association of Sanitation Agencies, and INDA and EDANA, the trade associations for non-woven fabrics, came to an agreement to establish labeling requirements for products that should *not* be flushed in lieu of defining what can be flushed. AB 1672 was held in the Senate Appropriations Committee amidst a truncated legislative session due to the pandemic; therefore, the author reintroduced the agreed-upon language from last year in AB 818.

Non-flushable labeling: There are many kinds of wipes on the market: "flushable" wipes, disinfectant cleaning wipes, makeup remover wipes, personal hygiene wipes, and baby wipes, among others. The wipes currently sold as flushable are made of cotton. Many of the wipes on the market not intended by the manufacturer to be flushable (but often are flushed by consumers) are made of cotton and plastic materials to make the wipes more durable (such as cleaning wipes). To try to address some of the consumer confusion, AB 818 requires specified products to be clearly labeled that they are not flushable per INDA's labeling requirements. INDA's Code of Practice includes a "Do Not Flush" symbol for companies to use on product packaging.



Arguments in support: Consumer Brands writes, "It is important to distinguish the fundamental differences between non-flushable wipes and flushable wipes. Non-flushable wipes, such as baby wipes and hard surface disinfectant wipes, are designed for stronger wiping tasks and therefore are to be thrown into the trash, not the toilet. Accordingly, most are labeled "Do Not Flush." Industry wide "Do Not Flush" labeling of packaging for wipes not designed to be flushable is the primary focus of industry's Code of Practice and AB 818. We believe a clear and consistent communication strategy on packaging is crucial to promote proper disposal and in turn minimize negative impacts of non-flushable products on municipal wastewater systems. Consumer Brands supports AB 818's provisions on consumer outreach and education to promote awareness, understanding, and compliance with the "Do Not Flush" label."

Related legislation:

- 1) AB 1672 (Bloom, 2019). Would have required labels indicating that a product should not be flushed on specified nonwoven disposable products and establish enforcement provisions and a consumer education and outreach program. This bill was held in the Senate Appropriations Committee.
- 2) AB 2256 (Huffman, 2010). Would have prohibited a person from packaging or labeling a consumer product for distribution or sale in California as flushable, sewer and septic safe, or other like term or phrase unless the product meets certain criteria, as specified. This bill was held in the Senate Environmental Quality Committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

National Stewardship Action Council (SPONSOR)
7th Generation Advisors
Alliance of Nurses for Healthy Environments
American Chemistry Council
American Forest & Paper Association
Association of California Water Agencies (ACWA)
Bay Area Pollution Prevention Group
California Advocates, Inc.
California Product Stewardship Council
California Resource Recovery Association
California State Association of Counties (CSAC)
California Water Association
Californians Against Waste
Camarillo Sanitary District
Camarillo; City of
Center for Oceanic Awareness, Research, and Education, the
Central Contra Costa Sanitary District
City of Camarillo
City of Roseville
City of Sunnyvale
City of Thousand Oaks
Clean Water Action
Credo Beauty
CSAC
Cucamonga Valley Water District
Defenders of Wildlife
Delta Diablo
East Bay Municipal Utility District
Eastern Municipal Water District
Facts: Families Advocating for Chemical & Toxins Safety
Full Circle Environmental
Heal the Bay
Irvine Ranch Water District
Kimberly-Clark Corporation
Las Virgenes Municipal Water District
League of California Cities
Los Angeles City Councilmember Paul Koretz
Los Angeles County Board of Supervisors
Los Angeles County Division, League of California Cities
Los Angeles County Sanitation Districts
Marin Sanitary Service
Merced County Regional Waste Management Authority
Monterey One Water
Natracare
Northern California Recycling Association

Ocean Conservancy
Personal Care Products Council
Plastic Oceans International
Plastic Pollution Coalition
Proctor & Gamble
Rancho Water
Rethinkwaste
Russian River Watershed Association
Save Our Shores
Sea Hugger
Sierra Club California
Sonoma Water
Stege Sanitary District
Surfrider Foundation
Thousand Oaks; City of
Upstream
Vallejo Flood and Wastewater District
Western Municipal Water District
Wishtoyo Chumash Foundation
Zanker Recycling
Zero Waste Sonoma
Zero Waste USA

Opposition

None on file.

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