

Date of Hearing: April 13, 2021

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 818 (Bloom) – As Introduced February 16, 2021

PROPOSED CONSENT

SUBJECT: SOLID WASTE: PREMOISTENED NONWOVEN DISPOSABLE WIPES

KEY ISSUES:

- 1) SHOULD CALIFORNIA ESTABLISH LABELING REQUIREMENTS FOR PREMOISTENED DISPOSABLE WIPES THAT INDICATE WHETHER OR NOT THE PRODUCT CAN BE FLUSHED INTO THE WASTEWATER STREAM?
- 2) SHOULD CALIFORNIA ESTABLISH A CONSUMER EDUCATION AND OUTREACH PROGRAM TO EDUCATE CALIFORNIA CONSUMERS ON WHICH PRODUCTS MAY OR MAY NOT BE SAFELY DISPOSED OF BY FLUSHING INTO THE WATERWATER SYSTEM?

SYNOPSIS

This measure represents the Legislature's second attempt to deal with the issues posed by the unseemly mixture of improperly disposed wipe products with kitchen greases and fats. That mixture, commonly referred to as a "fatberg," can pose significant threats to wastewater infrastructure and may result in unauthorized discharges of wastewater into California waterways. Unlike the prior bill, AB 1672 (Bloom, 2019), this measure is a compromise between the wipe manufacturing industry and California's sanitation districts. This bill would adopt a comprehensive labeling regime for flushable products and impose civil penalties upon manufacturers who fail to label products in accordance with this bill. Furthermore, this bill proposes a new public research and education campaign aimed at better informing Californians of the risks posed by flushing otherwise non-flushable materials down drains and toilets.

This bill is supported by a broad coalition of self-care product manufacturers, as well as sanitary districts, water districts, and conservation organizations. The coalition notes that this bill would adopt the most comprehensive and thorough regulatory scheme of wipe product labeling in the United States and help break long-held bad habits of many California consumers. As currently in print, this bill has no known opposition.

SUMMARY: Requires specified premoistened disposable wipes to be conspicuously labeled with "Do Not Flush" warnings. Specifically, **this bill:**

- 1) Defines the following terms:
 - a) "Covered entity" means the manufacturer of a covered product that is sold in the state or offered for sale in the state. "Covered entity" includes a wholesaler, supplier, or retailer that is responsible for the labeling or packaging of a covered product.
 - b) "Covered product" means 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.

- c) "High contrast" means satisfying both being provided by either a light symbol on a solid dark background or a dark symbol on a solid light background, and possessing at least 70 percent contrast between the symbol artwork and background, as specified.
 - d) "Label notice" means the phrase "Do Not Flush" and the size of the label notice shall be equal to at least 2 percent of the surface area of the principal display panel in size, as specified.
 - e) "Principal display panel" means the side of the product package that is most likely to be displayed, presented, or shown under customary conditions of display for retail sale, as specified.
 - f) "Symbol" means the "Do Not Flush" symbol, or a gender equivalent thereof, as depicted in the INDA/EDANA Code of Practice Second Edition and published within "Guidelines for Assessing the Flushability of Disposable Nonwoven Products," Edition 4, May 2018. The symbol shall be sized equal to at least 2 percent of the surface area of the principal display panel, except as specified.
- 2) Except as provided in by 5), 6), 7), 8) and 9), a covered product manufactured on or after July 1, 2022, must be labeled clearly and conspicuously in adherence with the following labeling requirements:
- a) In the case of cylindrical or near cylindrical packaging intended to dispense individual wipes, a covered entity must either place the symbol and label notice on the principal display panel in a location reasonably viewable each time a wipe is dispensed or place the symbol on the principal display panel, and either the symbol or label notice, or the symbol and label notice in combination, on the flip lid, as provided;
 - b) In the case of flexible film packaging intended to dispense individual wipes, a covered entity must place the symbol on the principal display panel and dispensing side panel and place the label notice on either the principal display panel or dispensing side panel in a prominent location reasonably visible to the user each time a wipe is dispensed. If the principal display panel is on the dispensing side of the package, two symbols are not required;
 - c) In the case of refillable tubs or other rigid packaging intended to dispense individual wipes and be reused by the consumer for that purpose, a covered entity must place the symbol and label notice on the principal display panel in a prominent location reasonably visible to the user each time a wipe is dispensed; or

- d) In the case of packaging not intended to dispense individual wipes, a covered entity must place the symbol and label notice on the principal display panel in a prominent and reasonably visible location.
- 3) Requires a covered entity to ensure the packaging seams, folds, or other package design elements do not obscure the symbol or the label notice.
- 4) Requires a covered entity to ensure the symbol and label notice have sufficiently high contrast with the immediate background of the packaging to render it likely to be seen and read by the ordinary individual under customary conditions of purchase and use.
- 5) Provides that for covered products sold in bulk at retail, both the outer package visible at retail and the individual packages contained within must comply with the labeling requirements in 2) through 4) applicable to the particular packaging types, except the following:
 - a) Individual packages contained within the outer package that are not intended to dispense individual wipes and contain no retail labeling; and
 - b) Outer packages that do not obscure the symbol and label notice on individual packages contained within.
- 6) Provides that if a covered product is provided within the same packaging as another consumer product for use in combination with the other product, the outside retail packaging of the other consumer product does not need to comply with the labeling requirements of 2) through 4).
- 7) Provides that if a covered product is provided within the same package as another consumer product for use in combination with the other product and is in a package smaller than three inches by three inches, the covered entity may comply with the requirements of 2) through 4) by placing the symbol and label notice in a prominent location reasonably visible to the user of the covered product.
- 8) Provides that if a covered product is required to be registered by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act then the covered entity must submit a label compliant with the labeling requirements of 2) through 4) no later than January 1, 2023, to the United States Environmental Protection Agency, and upon its approval, to the Department of Pesticide Regulation.
- 9) Provides that if the United States Environmental Protection Agency or the Department of Pesticide Regulation does not approve a product label that otherwise complies with the labeling requirements of 2) through 4) the covered entity must use a label with as many of the requirements as the relevant agency has approved.
- 10) Provides that if a covered entity, directly or through a corporation, partnership, subsidiary, division, trade name, or association in connection to the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of a covered product, cannot make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, illustration, trademark, or trade name, about

the flushable attributes, flushable benefits, flushable performance, or flushable efficacy of a covered product.

- 11) Provides that a covered entity may include on a covered product words or phrases in addition to those required for the label notice if the words or phrases are consistent with the purposes of this bill.
- 12) Establishes the California Consumer Education and Outreach Program and tasks the covered entities with coordinating to complete the following:
 - a) Participate in a collection study conducted in collaboration with wastewater agencies for the purpose of gaining understanding of consumer behavior regarding the flushing of covered products as a key input into the design of a consumer education and outreach program. The collection study must be jointly coordinated by the California Association of Sanitation Agencies and a group of covered entities;
 - b) Conduct a consumer opinion survey to identify baseline consumer behavior and awareness regarding the flushing or other disposal of covered products; and
 - c) Measure effectiveness of the consumer education program on consumer awareness of the symbol and label notice and consumer attitudes about disposal of covered products by conducting a subsequent consumer awareness survey comparing the baseline data provided by the 2022 survey with survey data from subsequent years. The surveys to determine the effectiveness and ongoing success of the consumer education program are to take place annually until December 31, 2026.
- 13) Provides that the California Consumer Education and Outreach Program is to conclude its work on December 31, 2026 and that the statute authorizing the Program is repealed on January 1, 2027.
- 14) Requires covered entities, either independently or in collaboration with other covered entities or other organizations, to conduct a comprehensive multimedia education and outreach program in the state that, at a minimum, does both of the following:
 - a) Promotes consumer awareness and understanding of and compliance with the symbol and label notice requirements. Covered entities must provide wastewater agencies with the consumer education messaging for the symbol and the label notice. The wastewater agencies may include the messaging as part of their routine communications with customers within their service area.
 - b) Provide education and outreach in Spanish and English.
- 15) Repeals the provisions of 14) on January 1, 2027.
- 16) Provides that any person who violates the labeling requirements specified in this bill may be enjoined in any court of competent jurisdiction.
- 17) Provides that a covered entity who violates the labeling requirements specified in this bill may be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per day, up to a maximum of one hundred thousand dollars (\$100,000) for each violation, and

that civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

18) In assessing the amount of a civil penalty to be imposed in accordance with 17) the court must consider the following factors:

- a) The nature, circumstances, extent, and gravity of the violation;
- b) The violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment;
- c) The violator's ability to pay the proposed penalty;
- d) The effect that the proposed penalty would have on the violator and the community as a whole;
- e) Whether the violator took good faith measures to comply with the law and when these measures were taken;
- f) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole; and
- g) Any other factor that justice may require.

19) Provides that the civil action in 17) may be brought by the Attorney General in the name of the people of the state, by a district attorney, by a city attorney, by a county counsel, or by a city prosecutor in a city or city and county having a full-time city prosecutor.

20) Directs any civil penalties recovered pursuant to this bill be paid to the office of the city attorney, county counsel, city prosecutor, district attorney, or Attorney General, whichever office brought the action, as specified.

21) Adopts a severability clause.

EXISTING 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 Section 42355.5.)
- 2) Prohibits, on and after January 1, 2020, a person from selling or offering for promotional purposes in this state any personal care products containing plastic microbeads that are used to exfoliate or cleanse in a rinse-off product, including, but not limited to, toothpaste. (Public Resources Code Section 42362.)

- 3) Provides that any person who violates 2) may be enjoined and subject to a civil penalty of \$2,500 per day for each violation. Provides that in assessing the civil penalty a court shall consider:
 - a) The nature and extent of the violation;
 - b) The number of, and severity of, the violations;
 - c) The economic effect of the penalty on the violator;
 - d) Whether the violator took good faith measures to comply with the law and when these measures were taken;
 - e) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole; and
 - f) Any other factor that justice may require. (Public Resources Code Section 42364.)
- 4) Provides that wherever 25 persons in any county, or in two or more counties within the same natural watershed area, desire the formation of a sanitary district within the area, they may sign and present a petition to the board of supervisors of the county in which the greatest portion of the area of the proposed district is situated at the time of the filing of the petition. If the district is to be located in more than one county, the petition shall be signed by no fewer than 15 persons in the county in which the greatest portion of the district is located and by no fewer than 10 persons in each other county in which the district is located. (Health and Safety Code Section 6420.)
- 5) Provides that a sanitary district may acquire, plan, construct, reconstruct, alter, enlarge, lay, renew, replace, maintain, and operate garbage dumpsites and garbage collection and disposal systems, sewers, drains, septic tanks, and sewerage collection, outfall, treatment works and other sanitary disposal systems, and storm water drains and storm water collection, outfall and disposal systems, and water recycling and distribution systems, as the board deems necessary and proper, and in the performance of these functions, either in or out of the district, it may join through joint powers agreements with any county or municipality or any other district or governmental agency. (Health and Safety Code Section 6512 (a).)
- 6) Provides that a sanitary district may lay its sewers and drains in any public street or road in the county, and for this purpose enter upon it and make all necessary and proper excavations, restoring it to proper condition. The work of restoring and repairing any such public street or road in the county shall be done under the supervision and control of the county engineer or road commissioner at the cost of the district, and in accordance with the standards established by ordinance of the board of supervisors for restoring and repairing county roads. (Health and Safety Code Section 6518.)
- 7) Provides that an on-site wastewater disposal zone may be formed to achieve water quality objectives set by regional water quality control boards, to protect existing and future beneficial water uses, protect public health, and to prevent and abate nuisances. Whenever an on-site wastewater disposal zone has been formed pursuant to this chapter, the public agency shall have the powers set forth in this article, which powers shall be in addition to any other powers provided by law. (Health and Safety Code Section 6975.)

- 8) Provides that an on-site wastewater disposal zone may do all of the following:
- a) Collect, treat, reclaim, or dispose of waste water without the use of communitywide sanitary sewers or sewage systems and without degrading water quality within or outside the zone;
 - b) Acquire, design, own, construct, install, operate, monitor, inspect, and maintain on-site wastewater disposal systems in a manner which will promote water quality, prevent the pollution, waste, and contamination of water, and abate nuisances;
 - c) Conduct investigations, make analyses, and monitor conditions with regard to water quality within the zone; and
 - d) Adopt and enforce reasonable rules and regulations necessary to implement the purposes of the zone. (Health and Safety Code Section 6976.)
- 9) 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 Section 17580.5 (a).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: The bill follows the author's prior effort, AB 1672 (Bloom, 2019), to address the significant problems that improperly flushed wet wipes pose to California's sanitation system. This measure reflects a compromise between wipe manufacturers and California's public sanitation districts and adopts a comprehensive regulatory scheme for addressing the problems posed by some wet wipes when they enter the sewer system. In support of the measure, the author writes:

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.

Seemingly innocuous wipes can wreak havoc on California's wastewater management systems. When consumers flush wipes down the toilet that are not engineered to quickly break down or dissolve, the wipes can cause significant problems once they enter the sewer system. Even if a wipe safely clears a consumer's home piping system and makes it into the wastewater disposal stream, the wipes would then merge with other flushed products. When fats, oils, and other incorrectly disposed of products are added into the mix, the resulting non-biodegradable resulting masses, charmingly referred to as "fatbergs," can damage wastewater treatment equipment and result in environmentally harmful sewer back-ups and spills. In addition to the disgusting nature of these fatbergs, local agencies must spend significant time and resources to remediate them, and if a fatberg results in a release of fluid from the sewer, the fatberg could lead to the imposition of fines and penalties on public agencies by the State Water Resources Control Board. At the same time, it is virtually impossible for public agencies to recover any of their costs for repairing their systems and paying fines for unlawful discharges from those who are truly responsible for the fatbergs and the havoc they reek.

The increased maintenance needed to prevent problems from nonflushable products can be exceedingly costly to public wastewater agencies, who in turn are forced to raise rates on Californians to cover the costs. Many of the sanitation agencies sponsoring this bill are finding that wipes are a significant culprit in causing sewer back-ups and equipment damage. In some cities, costly screening facilities have failed to stop these nonflushable wipes from finding their way through the wastewater system. In 2011, the Orange County Sanitation District conducted nearly 1,000 preventative or corrective maintenance calls on 10 of their 15 regional pump stations. They report that the total labor cost was more than \$300,000, and the Orange County Sanitation District continues to spend significant labor hours working to prevent clogs that could lead to a sewer spill. Their crews report having to clean their three most impacted pumping stations twice a week. In 2012, the Orange County Sanitation District reported that the equivalent of 40 large trash bags of materials overburdened their new headworks and completely plugged three new washer compactors. The impact of the wipes on the wastewater management system has forced some municipalities to invest in costly new equipment. For example, the City of Camarillo's Waste Water Treatment Plant spent approximately \$500,000 to upgrade its wastewater treatment plant pump systems to manage the volume of wipes passing through its system on a daily basis. As noted, all of these costs are eventually borne by California ratepayers—not manufacturers of the wipes that damage the systems—regardless of whether or not they happen to use wipe products.

Existing product labels do not inform Californians when it is safe to flush a wipe. Beginning in the 1980s, due to their wide range of household and personal care uses, disposable wipes began to flourish in the California market. In the intervening years, two types of products have come to dominate the disposable wipe market: dispersible and low-strength wipes. Low-strength wipes are designed to 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. Dispersible wipes are designed to perform like a standard wipe as far as strength and softness, but in a toilet disperse into individual fibers or small groups of fibers.

Many disposable wipe products are placed into the trash. For example, cleaning wipes, like those used in kitchens or on floors, are rarely disposed of in the wastewater stream. However, when it comes to 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 baby wipes, feminine hygiene products, and in some cases, diapers. Existing product labels do not always permit consumers to make educated decisions about flushability. For example, an internet search of retailers selling baby wipes reveals a variety of products with names that include the phrases “all natural,” “water wipes,” “aqua pure,” “Babyganics,” and “natural care.” (<https://www.target.com/s?searchTerm=baby+wipes&Nao=0>.) These products certainly give the appearance of being natural and safe, presumably for both a baby and the sewer system. Nonetheless, several of these products are not designed to be safely flushed into the wastewater system.

Additionally, over the past 13 months Californians have purchased record amounts of sanitizing wipes. While these are less likely to end up in the wastewater system it does happen, particularly when products are used to clean a bathroom. These products have similarly confusing labeling. For example, one wipe product bills itself as “down-to-earth solutions that are up to Earth's standards.” (<https://www.target.com/p/lemon-38-mint-multi-surface-cleaning-wipes-35ct-everspring-8482/-/A-75663177>) Again such labeling may result in consumers erroneously believing that a product is safe to flush, especially in light of the fact that the “do not flush”

symbol on the packaging is located at the bottom of the container and measurements by Committee staff determined that the warning label's circumference is approximately a half-inch in size and generally consistent with the overall color scheme of the packaging, which makes it hard to see.

In an attempt to combat improperly flushed wipes, California's municipal wastewater treatment agencies have set out to inform the public of the harms posed by wipes in order to reduce the rate of wipe-related incidents in the wastewater system. The efforts of California's sanitation agencies are assisted by the International Water Services Flushability Group's ongoing campaign to promote the "only the 3Ps" (pee, poop, and paper) set of principles on what should be flushed. Additionally, the California Association of Sanitation Agencies is promoting its own "Wipes Clog Pipes" campaign to boost awareness of the problem in the state. Despite the efforts by the members of the California Association of Sanitation Agencies, the public relations campaign has not made significant progress in lessening the problem. Accordingly, this bill's proponents suggest that improved on-product labels and a more refined approach to informing the public of the hazards of flushable wipes are necessary to address the issue.

This bill. Unlike when this Committee heard AB 1672, this bill reflects a broad compromise between wipe manufacturers and California's sanitation agencies. The measure would adopt a comprehensive set of requirements for labeling, including requirements that "do not flush" labeling be at least two percent of the total surface area of the packaging and that the warnings be issued in highly visible and contrasting colors. Additionally, this bill would require warnings to be placed in locations on packaging that better enable consumers to see the "do not flush" warning. Furthermore, the bill outlines a process for obtaining labeling approvals if a label is required to meet federal standards for pesticides or other similar products. Recognizing the need to balance enforcement of the standards with the realities of the modern supply chain, this bill would also impose civil penalties on wipe manufacturers of two thousand five hundred dollars (\$2,500) per day for violations of the labeling standards, but cap the penalties at one hundred thousand dollars (\$100,000) for each violation in the event that a company cannot quickly fix its labeling issues.

Unlike AB 1672, this bill also recognizes the need to better engage the public on the issue of wipe flushability. To that end, this bill establishes the California Consumer Education and Outreach Program and tasks the group, comprised of wipe manufacturers consulting with sanitation agencies, to study consumer trends and assumptions and design more effective outreach programs. The bill also requires the Program to publish reports on the progress of the new public relations campaign as reflected by public attitude survey data.

Striking a balance to keep wipes out of sewers. As noted above, this bill reflects nearly two years of discussion and compromise between wipe manufacturers and California's sanitation agencies. The result is a balanced and feasible measure that will punish bad actors while encouraging both wipe manufacturers and sanitation agencies to work together to address the problem. Perhaps most beneficial about this measure is that it recognizes that even the best labels may not be sufficient to change the long-standing habits of California consumers. Thus, the consumer behavior study and education components of this bill will hopefully begin to make meaningful changes in consumer behavior and reduce the amount of "fatbergs" that damage public infrastructure and increase utility costs for all Californians.

ARGUMENTS IN SUPPORT: This bill is supported by both the manufacturers of flushable wipes and California's sanitation districts. On behalf of the wipe industry, the Personal Care Products Council and INDA, the Association of the Nonwoven Fabrics Industry write:

Proper labeling is an important part of marketing a cosmetic or personal care product. Clear communication on packaging is vital to help ensure consumers understand the proper disposal route for these products and minimize the negative impacts of non-flushable products on municipal wastewater systems.

Additionally, writing on behalf of the wastewater management organizations, the Association of California Water Agencies writes:

AB 818 would ensure that wet wipes packaging clearly communicates the appropriate disposal method for products not intended to be flushed, and further requires wipe manufacturers to conduct education and outreach about the "Do Not Flush" symbol and label notice. If enacted, this bill would establish the strongest labeling requirements in the county.

REGISTERED SUPPORT / OPPOSITION:

Support

7th Generation Advisors
 Alliance of Nurses for Healthy Environments
 American Chemistry Council
 American Forest & Paper Association
 Association of California Water Agencies
 Bay Area Pollution Prevention Group
 California Advocates, Inc.
 California Product Stewardship Council
 California Resource Recovery Association
 California State Association of Counties
 California Water Association
 Californians Against Waste
 Camarillo Sanitary District
 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
 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
National Stewardship Action Council
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
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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