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## SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2019 - 2020 Regular

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**Bill No:** AB 1672  
**Author:** Bloom  
**Version:** 7/9/20  
**Urgency:** No  
**Consultant:** Gabrielle Meindl  
**Hearing Date:** 8/11/2020  
**Fiscal:** Yes

**SUBJECT:** Solid waste: premoistened nonwoven disposable wipes

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

Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow.

### **ANALYSIS:**

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))

This bill:

- 1) Defines "covered product" as a premoistened nonwoven disposable wipe marketed as a baby or diapering wipe or composed of petrochemical-derived fibers and is likely to be used in a bathroom and with 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.
- 2) Defines "covered entity" as the manufacturer of a covered product that is sold or offered for sale in the state, including a wholesaler, supplier, or retailer that is responsible for the labeling or packaging of a specified, covered product.
- 3) Commencing January 1, 2022, except as provided, requires certain nonwoven disposable wipes 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.
- 4) Prohibits a covered entity from making a representation about the flushable attributes, benefits, performance, or efficacy of those premoistened nonwoven disposable wipes, as provided.

- 5) Establishes enforcement provisions, including authorizing a civil penalty not to exceed \$2,500, up to a maximum of \$100,000 per violation. Requires the court, in assessing the amount of a civil penalty, to consider all of the following:
  - 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 this part 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.
- 6) 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.
- 7) 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.
- 8) Establishes a consumer education and outreach program as specified, including requiring covered entities to:
  - a) Collaborate 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;
  - b) Conduct a consumer opinion survey to identify baseline consumer behavior and awareness regarding the flushing or other disposal of covered products;
  - c) Conduct a comprehensive multi-media education and outreach program in the state, including promoting consumer awareness and understanding of and compliance with the Do Not Flush symbol and providing education and outreach in Spanish and English.

- d) Report to the Senate Committee on Environmental Quality, the Assembly Committee on Environmental Safety and Toxic Materials Committee, and the State Water Board on their activities on an annual basis.
- 9) Specifies that the education and outreach program shall conclude on December 31, 2025.

## Background

- 1) *Flushable vs. non-flushable products:* 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.

- 2) *Problems with non-flushable 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.

- 3) *California Sanitary Sewer Overflow database*: The State Water Resources Control Board (State Water Board) considers a sanitary sewer overflow (SSO) as any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system. SSOs often contain high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oil, and grease. SSOs pollute surface and ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.

According to the State Water Board's data on SSOs, 70% - 75% of the known causes and trends related to the causes of SSOs across the state tend to be tree roots, grease, fats, oils, and general debris. Even if wipes constitute less than 25% of the cause of SSOs, they still remain a disruption and a growing cost to local sanitation agencies to manage.

- 4) *The Cost of Wipes*. It is estimated that North American businesses and households spent some \$2.5 billion on personal wipes in 2019. There are no reliable statistics about how many wipes are flushed down toilets, but there are hundreds of reports each year of clogged household plumbing and costly damage to public sewer systems and treatment plants caused by wipes when they are flushed. In 2019, the National Association of Clean Water Agencies (NACWA) conducted a nationwide study of the costs of wipes. NACWA estimates that wipes result in about \$441 million a year in additional operating costs at US clean water utilities. The study estimates that the cost of wipes in California cities with collection systems is over \$47 million a year. Individual utilities in California pay on average about \$100,000 a year in additional operating costs because of wipes. Individual O&M associated with wipes cost the average individual in California about \$1.85 a year, although that figure varies considerably from city to city, with people in the highest cost city paying \$21.39 a year.

- 5) *Increase in SSOs Due to Wipes*. In the last decade, while annual non-wipes related SSO's have gone down by 56%, spills related to wet wipes have increased by 35%. Specifically, according to the California Association of Sanitation Agencies (CASA), in the last decade, wet wipes have been identified in 3,097 sanitary sewer overflows resulting in 5.9 million gallons spilled. Of these, 623 were Category 1 spills for which over 3.5 million gallons reached surface waters. With approximately 43,000 spills reported over the last decade, wet wipes were identified in 7% of incidences. There has been a Category 1 spill every week over the last decade in which wet wipes were identified.

In this year alone, wet wipes have been identified in 145 sanitary sewer overflows resulting in over 45,000 gallons spilled. Of these, 22 were Category 1

spills for which over 15,000 gallons reached surface waters. With 1,300 total spills reported thus far this year, wet wipes were identified in 11% of incidences. This represents a 53% increase in the amount of spills related to wet-wipes compared to the average over the last decade.

- 6) *State Water Board Advisory regarding Flushing Wipes and COVID-19.* In March, the 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.”*

## Comments

- 1) *Purpose of 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 wipes products do not break down when flushed and can catch on tree roots or other obstructions in residential sewer laterals and cause costly and dangerous backups for property owners and public wastewater infrastructure. Wet wipes have also been shown to cause significant damage to residential septic systems, resulting in expensive repairs and remediation for homeowners.

“AB 1672 prescribes clear and consistent consumer messaging to help combat the aforementioned problems caused by improperly flushing wet wipes. Wipes that are not intended by the manufacturer to be flushable, which are mostly made with plastic materials, should be labeled clearly and conspicuously to communicate that they should not be flushed. In order to address consumer confusion, AB 1672 would define these non-flushable wipes as “covered products,” and require them to be clearly labeled with the “Do Not Flush” symbol and warning notice. The bill would also require the manufacturers of these products or “covered entities” to conduct a comprehensive statewide consumer education and outreach campaign to inform the public not to flush products covered by the labeling requirement.

“Due to the COVID-19 pandemic and families being quarantined at home, there has been a significant uptick of wipes debris in California public sewer systems. The impact of people using single use disinfecting wipes to sanitize during the coronavirus outbreak, coupled with the toilet paper shortage leading to the use of non-flushable substitutes has exacerbated a problem that has plagued wastewater treatment systems for years. AB 1672 provides clear and consistent information to improve consumer understanding of how to properly dispose of single use plastic wipes.”

- 2) *Consensus Proposal.* Prior to the 2020 two-year bill deadline in January, the author, bill sponsors, and industry representatives agreed to enter into a good faith negotiation with the intent to find agreement on amendments to address the labeling of non-flushable wipes. The process was predicated on the understanding that the bill would not move forward unless all stakeholders agreed on the final language, and in that case the industry stakeholders would join as co-sponsors of the bill. Recent amendments to the bill represent the product of these months-long, weekly negotiations – a consensus agreement to establish the strongest non-flushable wipes labeling standard in the country.

The AB 1672 working group initially met and established their joint policy objective to keep plastic wipes out of wastewater by providing clear and consistent consumer information and proceeded in developing language to meet the objective. Throughout subsequent meetings, compromise language was negotiated to define “covered products” as those most likely to be used in a bathroom and flushed, and also as those wipes that are made with plastic fibers. Based on industry best practices, the labeling requirements language requires that “Do Not Flush” labeling is visible during two key consumer interactions with the product: when the product is purchased, and each time a wipe is dispensed from the package. The enforcement provisions were

developed to mirror similar environmental policy intended to keep plastic out of wastewater and the agreement strikes a balance of significant daily and total fines to command compliance, but without being overly punitive to the point that human error has the potential to make selling products in California cost prohibitive. Finally, recognizing that education is a driver of behavior change, the stakeholders negotiated provisions requiring manufacturers of covered products to conduct statewide multimedia education and outreach activities to explain the “Do Not Flush” symbol and label notice to consumers, and to gauge the effectiveness of their campaigns with consumer surveys.

**Related/Prior Legislation**

None

**SOURCE:** California Association of Sanitation Agencies, National Stewardship Action Council, and INDA – Association of the Nonwoven Fabric Industry

**SUPPORT:**

Association of California Water Agencies (ACWA)  
Babcock Laboratories, INC.  
Bay Area Pollution Prevention Group  
Burbank Sanitary District  
California Association of Sanitation Agencies  
California Manufacturers and Technology Association  
California Special Districts Association  
California State Association of Counties  
California-Nevada Section, American Water Works Association  
Camarillo Sanitary District  
Carpinteria Sanitary District  
Central Contra Costa Sanitary District  
City of Camarillo  
City of Glendora  
City of San Carlos  
City of San Diego  
City of Thousand Oaks  
City of Torrance  
City of West Hollywood  
Clean Water Action  
Delta Diablo  
Dublin San Ramon Services District



East Bay Municipal Utility District  
Elsinore Valley Municipal Water District  
Goleta Sanitary District  
INDA, Association of The Nonwoven Fabric Industry  
Inland Empire Utilities Agency  
Irvine Ranch Water District  
Kimberly-clark Corporation  
Las Virgenes - Triunfo Joint Powers Authority  
League of California Cities  
Leucadia Wastewater District  
Los Angeles County Division, League of California Cities  
Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force  
National Association of Clean Water Agencies  
Northern California Recycling Association  
Procter & Gamble  
RecycleSmart  
San Francisco Public Utilities Commission  
Sanitation Districts of Los Angeles County  
Sonoma County Water Agency  
Stege Sanitary District  
StopWaste  
Town of Apple Valley  
Valley Sanitary District  
West County Wastewater District  
Western Municipal Water District

**OPPOSITION:**

None received

**ARGUMENTS IN SUPPORT:** According to INDA, “Clear communication on packaging is vital to help ensure consumers understand the proper disposal route for these products and minimize negative impacts of non-flushable products on municipal wastewater systems. Key elements of the INDA labeling Code of Practice – the language-neutral symbol and other elements – are incorporated into the labeling specifications in AB 1672 (Bloom).

“We are proud to continue our work on product stewardship and expand our voluntary labeling practices into a mandate, as set forth in AB 1672. The bill’s provisions on consumer outreach and education to promote awareness,

understanding of, and compliance with the Do Not Flush symbol and label notice will help ensure enhanced disposal labeling has greater impact.”

**-- END --**