
CONSENT

Bill No: AB 818
Author: Bloom (D), et al.
Amended: 7/1/21 in Senate
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 7-0, 6/14/21
AYES: Allen, Bates, Dahle, Gonzalez, Skinner, Stern, Wieckowski

SENATE JUDICIARY COMMITTEE: 11-0, 6/29/21
AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird, Stern, Wieckowski, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 75-0, 5/13/21 (Consent) - See last page for vote

SUBJECT: Solid waste: premoistened nonwoven disposable wipes

SOURCE: National Stewardship Action Council

DIGEST: This bill 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.

ANALYSIS:

Existing federal law:

- 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)

Existing 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) 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.

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.
- 6) *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.
- 7) *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.”

- 8) *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.

- 9) *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.

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 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."

Related/Prior Legislation

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. The bill was held in the Senate Appropriations Committee.

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. The bill was held in the Senate Environmental Quality Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/12/21)

National Stewardship Action Council (source)
American Forest & Paper Association
Association of California Water Agencies

California Alliance of Nurses for Healthy Environments
 California Association of Sanitation Agencies
 California Municipal Utilities Association
 California Special Districts Association
 California State Association of Counties
 California Water Association
 Central Contra Costa Sanitary District
 City of Camarillo
 City of Roseville
 City of San Diego
 City of Thousand Oaks
 Cucamonga Valley Water District
 Delta Diablo
 East Bay Municipal Utility District
 Eastern Municipal Water District
 Inda, Association of the Nonwoven Fabric Industry
 Irvine Ranch Water District
 Kimberly-Clark Corporation
 Los Angeles County
 Los Angeles County Division, League of California Cities
 Los Angeles County Sanitation Districts
 Monterey One Water
 Personal Care Products Council
 Rancho Water
 Sonoma Water
 Upper San Gabriel Valley Municipal Water District
 Western Municipal Water District

OPPOSITION: (Verified 8/12/21)

None received

ASSEMBLY FLOOR: 75-0, 5/13/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow,
 Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Chau, Chen, Chiu, Choi,
 Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier,
 Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez,
 Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee,
 Levine, Low, Maienschein, Mathis, Mayes, McCarty, Mullin, Muratsuchi,
 Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva,
 Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas,

Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel,
Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon
NO VOTE RECORDED: Cervantes, Gallagher, Medina

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