

March 2, 2020

The Honorable John Lesch, Chair
651-296-4224
House Judiciary Finance and Civil Law Committee
Minnesota House of Representatives
563 State Office Building
St. Paul, MN 55155

RE: HF 3181 (Claflin) Nonwoven disposable product labeling provided – OPPOSED position

Dear Chair Lesch and Committee Members:

On behalf of producers of flushable wipes, INDA, Association of the Nonwoven Fabrics Industry, respectfully opposes HF3181 (Claflin) Nonwoven disposable product labeling.

INDA is a trade association whose member companies include almost all wipes fabric makers, wipes manufacturers, and some brand owners operating in North America. Our members are committed to the design and marketing of wipes products to meet the expectations of consumers while minimizing post-consumer impacts on municipal wastewater infrastructure and the environment. To that end, the persistent problem of wastewater system clogs warrants a solution narrowly tailored to address the categories of wipes demonstrated to clog systems by municipal forensic collection studies rather than overbroad government regulation of a product based on anecdotal input.

HF3181 will not address the proponents' stated objective of reducing system clogs for the following reasons:

- 1) Imposing a performance standard on wipes labeled "flushable" is an arbitrary approach to addressing wastewater system clogs, considering that municipal forensic studies to date of clogs and accumulations in treatment systems reveal that up to 99 percent of the problem in wastewater systems is flushing of wipes and other items NOT labeled "flushable."
- 2) The flushability performance standard in the bill is vague and ambiguous, referring to "tests for flushability" in a 2014 Federal Trade Commission order that contains no tests. Alternatively, the bill refers to INDA's Flushability Guidelines, which do include testing, but qualifies it with "that has been approved by the MPCA."
- 3) The bill's labeling provisions for wipes that are non-flushable are also vague and ambiguous as they similarly refer to INDA's labeling code of practice but qualify them with "that has been approved by MPCA." Further, the bill language provides a narrower definition of covered products than defined in INDA's Code of Practice, which may have the perverse impact of covering fewer categories of wipes not labeled "flushable" that warrant the "Do Not Flush" symbol.

Municipal studies of clogs/accumulations indicate flushing of wipes NOT labeled flushable as up to 99 percent of the problem.

Over the last four years, municipal wastewater agencies in the United States and United Kingdom have conducted forensic collection studies either jointly with industry or independently to formally analyze the contents of clogs or accumulations in pumps or treatment plant inlet screens.

In studies conducted in Minnesota, New York City, Jacksonville, FL, and the United Kingdom, the forensic data is strikingly consistent on one data point relevant to the focus of HF3181: **flushable wipes constitute no more than 1-2% of what is collected and identified.** The forensic data shows the primary issue to be the flushing of wipes and other products NOT labeled “flushable” such as baby wipes, hard surface cleaning or sanitizing wipes, feminine hygiene products, and paper hand towels.

The Minnesota collection studies were conducted by seven in-state municipalities or wastewater utility commissions in 2016 and 2017 to examine debris in their respective systems. These studies were conducted as part of the City of Wyoming, MN et al. municipal class action lawsuit against several manufacturers of flushable wipes. Using an agreed upon protocol, the plaintiffs recovered all materials from clogs and maintenance over an almost 12-month period, which were independently cleaned, dried, sorted and counted by a third-party expert.

Of the 94 Minnesota collections of material analyzed, **44 contained no wipes whatsoever of the type that are labeled “flushable”** and, of **the remaining 50 collections, flushable wipes constituted a mere 1.28%** by weight averaged across all materials. The plaintiff municipalities in that suit eventually dropped all claims for damages.

Collection study reports for the other jurisdictions are attached as information, but the primary findings on wipes and other materials collected and identified are as follows:

- 2016 New York City Study (by NYC Dept. of Environmental Protection and Dept. of Law)
 - Items NOT labeled “flushable” constituted 98 percent; with largest category being baby wipes (38 percent).
- 2017 Water United Kingdom Study (by the wastewater association Water UK, various local system operators and UK wipes industry representatives)
 - Items NOT labeled “flushable” constituted 98 percent; with largest categories being baby wipes, surface/sanitizing wipes, and feminine hygiene products.
- 2019 Jacksonville (FL) Study (by Jacksonville Electric Authority (JEA) wastewater system and INDA member Kimberly-Clark Corp.)
 - Items NOT labeled “flushable” constituted more than 99 percent; with largest category being baby wipes (37 percent) and paper products such as hand towels (28 percent).

Accordingly, HF3181’s requirement that the Minnesota Pollution Control Agency (MPCA) determine whether wipes labeled “flushable” can continue to be sold in Minnesota is unfounded by forensic clog data collected in Minnesota and other jurisdictions and is an unnecessary regulation of a product in Minnesota and interstate commerce.

Prominent “Do Not Flush” labeling of baby wipes, hard surface cleaning/sanitizing wipes and other non-flushable wipes is a narrowly tailored approach to the documented problem.

HF3181 would be better able to address the clog problem documented by forensic studies if it simply codified the INDA Code of Practice for “Do Not Flush” labeling of wipes NOT designed and labeled as flushable. The Code of Practice has detailed specifications for such labeling including: 1) a language neutral approach that calls for the use of a widely recognized Do Not Flush symbol; 2) sizing requirements for the symbol corresponding to various packaging sizes; and 3) guidance on the contrast and prominent placement

of the Do Not Flush symbol based on specific packaging formats (e.g., boxes, dispensing tubs, cannisters or soft packs). While most producers of baby wipes, hard surface cleaning/sanitizing wipes and other non-flushable wipes follow the INDA Code, some use disposal labeling that falls short of mark. Codifying the INDA Code of Practice would address that issue.

Industry acknowledges that prominent Do Not Flush labeling alone may not suffice to motivate frequent flushers of non-flushable wipes to adopt proper disposal habits. However, despite the best of intentions, typical what-to-flush messaging by wastewater agencies and state agencies like MPCA – such as “Flush Only Pee, Poo and Paper” or “Don’t Flush Any Wipes” – has been running for over a decade, but has had little impact on preventing non-flushable items from being flushed. Given that approximately 20 percent of U.S. households purchase flushable wipes, many Minnesotans have established toileting regimens involving flushable wipes. “No wipes” messaging leaves them effectively with only one or two options: either giving up flushable wipes entirely or discarding them after wiping in the trash. For most consumers, toilet tissue or wipes containing adult feces belong nowhere but the toilet, so the latter is not a realistic option.

Tailoring what-not-to-flush campaigns to address only items documented to be a problem has proven successful in wastewater systems. Portland (ME) Water District’s “Don’t Flush Baby Wipes” campaign is a good example of putting collection study data to work through a targeted campaign – the end result being a 40% reduction in the volumes of baby wipes in the relevant treatment plant compared to the volumes preceding the campaign. This campaign received an Environmental Merit Award from the U.S. Environmental Protection Agency. A copy of the campaign (and forensic study) report is attached for the Committee’s information.

INDA and its member companies take seriously the challenges Minnesota wastewater agencies are facing as well as our responsibility to be mindful of the post-consumer fate of our products. In the interest of putting science and data to work on the persistent problem of system clogs, we urge the Committee to help focus the state’s energies on a collaborative approach with the wipes industry to address the incorrect disposal of wipes demonstrated to clog or accumulate in systems – not to impose flushability standards based solely on anecdotal observations.

Industry would welcome the opportunity to work with your wastewater constituents on improving “Do Not Flush” labeling of wipes not labeled “flushable” and a strategic consumer education approach that focuses on flushing of baby wipes, surface and sanitizing wipes and other items proven to be causing problems for municipal wastewater agencies. If wastewater agencies believe forensic study data may look different in the state of Minnesota, INDA would be pleased to lend itself to a joint effort that marries agencies’ understanding of local system hotspots and operations with our expertise on materials/product identification.

For these reasons, we are respectfully opposed to HF3181 as written. If you have any questions about our position, please do not hesitate to call. It would be a pleasure to speak with you.

Sincerely,



Jessica Franken, INDA
Director of Government Affairs