

June 18, 2015

Federal Trade Commission
Office of Secretary
Constitution Center
400 Seventeenth Street, SW
Washington, D.C. 20024

Re: Nice-Pak Products-Consent Agreement
File No. 132 3272

The City of Brewer Water Pollution Control Facility believes that the products named in the FTC's proposed settlement contribute to clogs of plumbing, septic systems, and municipal wastewater systems. These clogs have been documented to cause Sanitary Sewer Overflows (SSO's) that often result in environmental and financial impacts to the general public. Municipal utilities are required to respond to- and are held accountable for- SSO's in their communities, but have not had support from a federal agency to address these products or the ability to contribute to a solution until now.

The City of Brewer Water Pollution Control Facility is pleased to see that the FTC's proposed settlement includes the need for a product marketed as "flushable" to disperse in a short period of time after flushing. Documentation of the behavior of these products under "real world" conditions has been severely lacking in many "flushable" products in the marketplace- those named in the settlement, and others.

The City of Brewer Water Pollution Control Facility appreciates that the FTC has acknowledged that the Third Edition of the INDA's Flushability Assessment Guidelines (GD3), which has not been accepted by wastewater professionals, is a guideline and not a standard. Use of the testing procedures is voluntary, whether a manufacturer is member of INDA or not. Without accepted standards, claims by manufacturers that a product "meets flushability guidelines or standards" are misleading to consumers.

The City of Brewer Water Pollution Control Facility believes it's critical that a standard for "flushable" be implemented, so that the responsibility to demonstrate that a wipe disperses in "real world conditions" noted in FTC's settlement is applicable to all manufacturers of wipes marketed as flushable, not just manufacturers that elect to test their product under INDA's voluntary guidelines.

In its May 26, 2015 press release, Nice-Pak asserts that its current portfolio of "flushable" wipes is not impacted by the FTC's proposed settlement. However, Nice-Pak's statement that claims of flushability can be "verified" or "substantiated" rely on testing completed under GD3. As noted, GD3 is not representative of real world conditions and has not been accepted by wastewater professionals. Therefore, while Nice-Pak's current products may pass GD3 (although testing data is not available for review), they cannot claim that these products satisfy the FTC's intent for demonstrable dispersibility. The current product portfolio may not satisfy the standard being developed jointly by INDA and the wastewater sector, and may not disperse in real world conditions.

Data from product testing under an accepted standard needs to be made available for review as part of process to evaluate whether a product disperses readily in “real world conditions”. This would best be managed under a third-party certification process, such as the USDA recently announced for labeling of products that do not contain Genetically Modified Organisms. This would provide the impartial, transparent evaluation that is required to prevent environmental damage.

We urge the FTC to develop a definition of “Flushable” for inclusion in its Green Guides, as it has for such terms as “Compostable”, “Degradable”, “Recyclable”, and “Made with Renewable Content”. The Green Guides were developed by FTC to ensure that the claims made by a manufacturer about behavior of their products in the environment are truthful and non-deceptive- a need that applies directly to the product category addressed in the FTC’s proposed settlement.

The City of Brewer Water Pollution Control Facility strongly recommends that professionals in the plumbing, septic system, and wastewater management sectors be involved in FTC’s ongoing discussions related to the definition of “flushable” and labeling of similar but non-flushable wipes.

Poor labeling of products that should not be flushed contributes to consumer confusion and exacerbates the burden on plumbers, septic systems, and municipal utilities to deal with clogs caused by these products. FTC’s final settlement will only be effective if products that do not satisfy real world conditions for dispersion after flushing (such as baby wipes, non-flushable toilet wipes, cleaning wipes, facial wipes, feminine hygiene wipes, and other similar wipes) are required to have a prominent, consistent “Do Not Flush” logo on the package. Placement of such a “Do Not Flush” logo on these product categories is currently voluntary, and a quick inspection of packages at any retail store would reveal that compliance with this is very low. Many prominent wipes manufacturers do not presently place a “Do Not Flush” logo on packages of non-flushable wipes. Other prominent manufacturers produce packages with the logo hidden, use a logo that is unclear or very small, or bury the “Do Not Flush” message in text so small that it is practically illegible. With the consumer confusion that has already been created, and the similarity in products, manufacturers should not be permitted to use “we aren’t marketing it as flushable” as a positive defense for not using a prominent “Do Not Flush” logo.

The City of Brewer Water Pollution Control Facility wishes to thank the FTC for its support of municipal utilities and wastewater managers on this issue.

Sincerely,

Lucien J. Colburn
Chief Operator/Pretreatment Coordinator