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June 17, 2015
VIA COURIER

Federal Trade Commission
Office of Secretary
Constitution Center
400 Seventh Street, SW
Room 5610
Washington, D.C. 20024

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



These comments are submitted on behalf of the Water Environment Federation (WEF), a not-for-profit technical and educational organization of 35,000 individual members and 75 affiliated Member Associations representing water quality professionals around the world. Since 1928, WEF and its members have sought to protect public health and the environment. WEF members are directly responsible for the design, construction and operation of wastewater treatment systems and collection systems. As a global water sector leader, our mission is to connect water professionals; enrich the expertise of water professionals; increase the awareness of the impact and value of water; and provide a platform for water sector innovation. In short, WEF has the professional expertise in the identified relevant field of "household and municipal sewage lines, septic systems and other standard wastewater equipment" that must be considered in establishing competent and reliable evidence of "flushable" products. The WEF is concerned about the impact of wipes on municipal wastewater infrastructure including collection systems, pumps and other potentially affected treatment systems and its resulting health impacts and increased maintenance and capital costs. For that reason, WEF has been investigating the full impact of wipes and working with our Member Associations and other partners to determine the environmental, financial and human impact on local communities. WEF and its partners have also been working with the Association of the Nonwoven Fabrics Industry (INDA), who have engaged the wastewater sector in a positive dialogue as part of its Guidelines for Assessing the Flushability of Disposable Nonwoven Products 4th Edition ("GD4") discussions. This effort is to explore the need for solutions and standards to address the issues raised by the increase in products being disposed through flushing, and although no final agreement or outcome has been reached, the WEF and its partners will remain engaged even if it is not yet known whether FTC will consider that process "competent and reliable." WEF commends the FTC for providing the framework through this settlement to address the need to develop technical standards, labeling and public messaging that will protect both the consumer and the municipal wastewater infrastructure.

I. TECHNICAL STANDARDS FOR DISPERSION OF WIPES

Specifically, the FTC's recognition of the need for products labeled "flushable" to ***demonstrate that the covered product disperses in a sufficiently short period of time after flushing*** is the key provision that the wastewater sector has identified as lacking in current products. WEF agrees that flushable products cannot make any of the nine representations outlined in Part I of the Agreement and Consent Order, in any manner, unless there is competent and reliable evidence to substantiate the claim. WEF has not lent its expertise in setting any guidelines or standards to establish that moistened nonwoven wipes are flushable. Therefore, WEF contends that claims that wipe products meet flushability standards or guidelines, at present, would be misleading to consumers and should be prohibited until such standards are established with the input of professional experts such as WEF members.

Products that quickly lose their strength, and begin to disperse shortly after flushing are less likely to cause blockage issues in the consumer's plumbing. Those same rapid dispersion properties will also limit the operational problems in the municipal sewerage lines and pumping stations that can cause sanitary sewer overflows (SSOs), and their related public health and safety risk to the general public. Rapid dispersion will also mitigate clogging and damage within municipal waste water treatment processes such as washer compactors and digester pumps and heat exchanger tubing. The burden of increased municipal capital, operations, and maintenance costs due to wipes is transferred to the public in terms of higher sewer use fees and rates as well. Finally, municipalities are concerned with wipes that incorporate plastic materials which negatively impact the quality of municipal biosolids. As part of the GD4 talks, the parties are conducting research and reviewing results to find the right combination of material strength and size that will have the least impact on the municipal systems, specifically pumps, which are the primary operational problem area for the wastewater sector.

As the FTC also noted, it is imperative that the test conditions substantially replicate the varied physical conditions of the wastewater environment in which the covered product may be disposed in. WEF also agrees with the FTC's assertion that stakeholder groups such as plumbers, and wastewater experts should be an integral part of any guideline and/or standard setting processes, against which claims of flushability will be judged.

The wastewater sector has been critical of the current GD3 (3rd Edition) guidelines for lacking real world testing conditions and the lack of input from the stakeholder groups, such as WEF. WEF specifically disputes the application of the currently applied disintegration (dispersion) test, as it creates an unrealistic expectation that a wipe passing this test, will similarly disperse in either the consumer's plumbing or the municipal wastewater collection system. Neither the amount of time allowed, nor the amount of force applied reflects real world conditions, and the results, when coupled with the extremely generous pass/fail criteria do not represent the anticipated conditions in a wastewater collection system or the expected results. While representatives of the wastewater sector are working with the INDA manufacturers as part of GD4 to develop agreed test procedures that substantially replicate the varied physical conditions of wastewater treatment facilities, no agreement on testing guidelines has yet been reached.

II. CONSUMER PUBLIC LABELLING AND PUBLIC MESSAGING

In addition to the FTC action, the importance of this issue of flushable wipes is evidenced by the numerous articles published on the topic and the class action lawsuit filed *Kurtz v. Kimberly-Clark and Costco / Belfiore v. Procter & Gamble* Case 14-CV-1142 (E.D.N.Y) ("Class Action"). In connection with the Class Action, the Court has scheduled a "science day" on the flushability issue designed to hear from experts in the field, including a WEF

member who manages a municipal wastewater authority. It is well documented, that following the introduction of "flushable" wipes to the market, consumers have increased their flushing of other similar nonwoven wipes not designated as "flushable" by manufacturers, creating confusion for customers as what is and what is not flushable. Given this customer confusion caused as a direct result of introducing consumers to "flushable" wipes, and resulting problems for plumbing and wastewater treatment, any resolution of this problem must also include a commitment to product stewardship which include proper labeling that clearly informs consumers when the nonwoven wipe product cannot be disposed by flushing. Such clear and conspicuous disclosures are needed to prevent the existing customer confusion and to assure consumers are not misled. WEF believes it is the responsibility of the producers to correct this confusion by clearly labelling products and through public outreach to prevent additional clogging and damage to sanitary systems and reduce health and safety risk to the general public. WEF and its partners are prepared to advise manufacturers on product stewardship efforts including appropriate labelling and public outreach.

In conclusion, WEF supports the FTC in requiring that claims that wipes are flushable be supported by competent and reliable evidence that includes the expertise of professionals in the plumbing and wastewater treatment sectors. The testing must be objective, reliable and transparent so that consumers are not misled. Likewise, to address the existing confusion and to avoid misleading consumers, the labels of all nonwoven wipes that the manufactures have not designated as flushable must be clearly and prominently labeled to inform consumers that they cannot be disposed of by flushing.

WEF would be happy to share our information and expertise in order to assist the FTC. Please contact me at cternieden@wef.org or at (703) 684-2416 should you have any questions.

Sincerely,


Claudio H. Ternieden
Director, Regulatory Affairs
Water Environment Federation

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