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June 19, 2015

Federal Trade Commission

Office of the Secretary

600 Pennsylvania Avenue NW.

Suite CC-5610 (Annex D)

Washington, DC 20580

Submitted via: <https://ftcpublic.commentworks.com/ftc/nicepakconsent/>

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

The National Association of Clean Water Agencies (NACWA) appreciates this opportunity to comment on the proposed consent agreement between the Federal Trade Commission (FTC) and Nice-Pak Products, Inc. NACWA represents the interests of nearly 300 publicly owned wastewater treatment agencies nationwide, serving the majority of the sewered population in the U.S. NACWA members experience many problems from wipes and other products that do not break down quickly when they are flushed into sewer systems. As a result of these products being flushed, utilities must spend millions of dollars responding to overflows, cleaning clogged pumps and other equipment, and replacing equipment that should have had many more useful years of service. In addition, utility personnel are placed at risk of injury and infection each time they must remove these materials from equipment.

NACWA supports the proposed agreement and recommends that it be finalized without change. These comments explain why NACWA agrees with the requirements in the proposed agreement that must be met to claim that a wipe is flushable and provide additional considerations for the FTC as it continues to work on the issues associated with flushable wipes. These comments also include an update on the collaborative work being conducted by NACWA and other associations to develop guidelines for determining if a wipe can be marketed as flushable.

**Proposed Requirements Are Appropriate**

NACWA began receiving reports from utility members in 2008 about problems caused by wipes, including clogged pumps, which can cause overflows of untreated sewage, and excessive wipes accumulation on bar screens and other equipment.

Dealing with these problems can be very expensive for utilities due to the costs for the personnel to manually clean the pumps and other equipment, the disposal of the materials in landfills, the extra electricity used to operate clogged pumps, and the replacement of equipment that would have operated for many more years without the burden of wipes. In addition, clogged equipment may lead to sewage overflows, which are a violation of the Clean Water Act and may put utilities at risk of regulatory penalties and third party lawsuits. Utilities have generally reported an increase with the problems caused by wipes since 2008.

To help prevent these problems, any wipes that are labeled “flushable” or imply flushability must break apart quickly after being flushed. NACWA agrees with the requirements listed in Section I of the proposed agreement. The FTC has correctly identified that “competent and reliable scientific evidence” must substantiate that a product will “disperse in a sufficiently short amount of time after flushing” and “replicate the physical conditions of the environment” where the product will be disposed of, as described in items A and B on page 3 of the proposal.

NACWA also agrees that the evidence must be “based on the expertise of professionals in the relevant area,” and that this expertise must include wastewater utility professionals, who understand the environment that wipes will experience after being flushed. The first three editions of the *Guidelines for Assessing the Flushability of Disposable Nonwoven Products*, published by INDA and EDANA (the trade association of the nonwoven fabrics industry for North America and Europe, respectively), did not include the expertise of wastewater utility professionals. In NACWA’s opinion, the current (third edition) *Guidelines* do not provide evidence of flushability, since they do not “replicate the physical conditions” of municipal sewer systems and allow too long for wipes to disperse.

NACWA is currently working with INDA, the Water Environment Federation (WEF), the American Public Works Association (APWA), and the Canadian Water & Wastewater Association (CWWA) to develop updated flushability guidelines that will represent a consensus between the wastewater and wipes industries. These new guidelines are expected to be completed by June 2016, and the wipes industry will be asked to adhere to the new guidelines by June 2017. These guidelines will be voluntary, however, and therefore all flushability claims will still need to be monitored carefully by the associations and the FTC. The requirements in the proposed agreement should be met by the tests and procedures that will be contained in the new guidelines.

### **Proposed Requirements Should Apply to All Wipe Manufacturers**

The requirements proposed by the FTC should apply to all wipe manufacturers. Many other companies also market and sell wipes as “flushable,” even though they do not meet the proposed requirements. Since there are currently no regulatory standards that must be met to make a claim of flushability, the FTC should investigate other wipes making this claim, apply the same evidence requirements used in the proposed agreement with Nice-Pak Products, Inc., and pursue similar consent agreements with other wipes manufactures found to have misleading flushability claims.

### **Additional Consideration of Plastics in Wipes**

NACWA asks that the FTC, in future investigations related to flushable wipes, consider the problems presented by wipes that contain plastic, even if the plastic is broken down into small pieces during the treatment process. Awareness of the problems caused by very small particles of plastic that pass through the wastewater treatment process has recently increased. Plastic microbeads contained in consumer products – such as facial scrubs and

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toothpastes – have been found in the Great Lakes and other water bodies. These microbeads can be eaten by fish, and then move up the food chain. In addition, toxic chemicals may adhere to the microbeads, increasing their potential danger when ingested. Plastic microfibers are also now being identified in water bodies, posing the same problems as plastic microbeads. If wipes containing plastic are broken down into small particles during the wastewater treatment process and pass through treatment plant and into receiving waters, then they could have the same impact on aquatic life as plastic microbeads and microfibers.

Plastic particles that are removed from wastewater at the treatment plant will be contained in the biosolids produced by the treatment processes. Utilities are increasingly using biosolids as a resource, by combusting the biosolids to produce energy or by using the biosolids for fertilizer or compost. These beneficial reuse options are compromised by plastic content in the biosolids. If plastic is combusted along with the biosolids, air emissions of toxic chemicals may increase, making it more difficult for utilities to meet their stringent emission requirements. Plastic contained in fertilizer or compost makes these materials much less desirable. Plastics should therefore be kept out of the sewer system, and products marketed as flushable should not contain any plastics.

Thank you for consideration of our comments and for addressing inappropriate claims of flushability for wipes. Please contact me at 202/533-1836 or [cfinley@nacwa.org](mailto:cfinley@nacwa.org) if you have any questions about NACWA's comments.

Sincerely,

A handwritten signature in cursive script, reading "Cynthia A. Finley".

Cynthia A. Finley, Ph.D.  
Director, Regulatory Affairs