

Fight over 'flushable' wipes D.C. says are clogging sewer systems heads to federal court



Disposable wipes at a New York wastewater treatment plant in 2014. A manufacturer is suing the District of Columbia over a new law that regulates when wipes can be labeled "flushable." (New York City Department of Environment Protection)

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The question of whether flushable wipes — used by potty-training toddlers and people looking beyond traditional toilet paper — are clogging sewer systems will be hashed out in federal court, where a manufacturer has sued the District of Columbia over a new city law regulating when such wipes can be labeled "flushable."

Dallas-based Kimberly-Clark, which manufactures Cottonelle, Scott Naturals and Pull-Ups flushable wipes, alleges that the District law — the first of its kind in the U.S. — is unconstitutional because it tries to regulate businesses beyond the city. The company also alleges that the law violates the First Amendment because it could require companies that believe their wipes to be flushable to label their products as "do not flush."

"In seeking this court intervention, Kimberly-Clark is fighting for our consumers and standing up for our brands," company spokesman Bob Brand said in an email. "The District of Columbia has unfortunately passed a

law that will severely restrict, if not eliminate, consumers' ability to purchase flushable wipes in Washington D.C."

The law, which takes effect Jan. 1, came in response to complaints from DC Water and sewer utilities nationwide that flushable wipes are jamming pumps, blocking screens and clogging equipment at sewage treatment plants. The problem costs U.S. utilities up to \$1 billion annually, according to the National Association of Clean Water Agencies.

The issue drew international attention a few years ago, when a 15-ton glob of wipes and hardened cooking grease the size of a bus — and nicknamed "Fatberg" by the Brits — was discovered blocking a London sewer pipe.

The D.C. law requires that wipes sold in the city be labeled "flushable" only if they break apart "in a short period of time after flushing in the low-force conditions of a sewer system." Wipes that don't meet that standard — the city hasn't yet proposed detailed regulations — must be "clearly and conspicuously" labeled as something that "should not be flushed."

D.C. Council Member Mary Cheh, who sponsored the legislation, called Kimberly-Clark's lawsuit "sort of ridiculous."

Cheh, who teaches constitutional law at George Washington University, said local and state governments routinely pass consumer protection laws that affect out-of-state companies. Courts give "wide latitude" in such cases, she said, as long as a law doesn't discriminate against certain companies.

"We're not banning these wipes," Cheh said. "Let's be really clear about that. We're just saying they should tell the truth and shouldn't label them as flushable when they're not."

Cheh said the wipes industry is attacking the law because it's the first attempt to regulate what qualifies as "flushable," and companies are concerned other governments will follow suit. A similar proposal recently died in the [Maryland General Assembly](#). Cheh noted that wipes companies unsuccessfully lobbied Congress to kill the D.C. law.

The lawsuit, which was filed Friday in U.S. District Court, names the city; Mayor Muriel Bowser; city attorney general Karl Racine; Tommy Wells, director of the D.C. Department of Energy & Environment; and DC Water.

A spokesman for Racine said he couldn't comment on a pending lawsuit, and a DC Water spokesman declined to comment.

In its complaint, Kimberly-Clark said it "has spent millions of dollars and over two decades of study" to develop wipes that "lose strength" once they hit toilet water and "become increasingly likely to break into pieces" as they move through home plumbing and sewer pipes.

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