

# TAKE BACK RESPONSIBILITY



The Clean Water Agency's  
Unique Role in Solving  
a Deadly National Crisis

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By Cynthia Finley



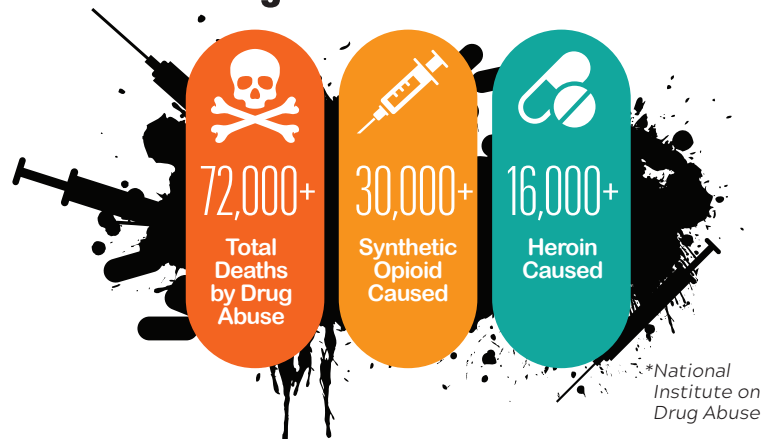


**T**he sheer numbers of drug abuse-related deaths in the US are striking and sobering. Entire football stadiums of people are being lost on an annual basis.

Of the two deadliest substances being abused—synthetic opioids and heroin—the so-called “gateway” can be directly traced

to legally prescribed medications. Of the people who began abusing opioids in the 2000s, 75% reported that their first opioid use was prescription drugs, while a study of young, urban heroin users in 2008 and 2009 found that 86% had used opioid pain medications prior to their heroin use. The opioid source for these users?

## US Drug Abuse Deaths in 2017\*



Family, friends, and medical professionals by way of personal prescriptions.

While the law enforcement and judicial systems are tasked with protecting the public from illegal drug use, these deadly problems align in

a significant way with the mission of the clean water agency. As arbiters of the public trust, clean water agencies have the unique responsibility of protecting the public—and the entire ecosystem—from improper drug disposal, including dumping drugs down the toilet or sink. In reality, the safe, proper management of pharmaceuticals—from acquisition to disposal—is everyone’s responsibility.



drug abuse problems. This is the case with “pharm parties” or “Skittles parties,” a troubling trend among teens whereby they gather prescription and over-the-counter medications into a communal bowl, and then invite fellow party-goers to grab handfuls to consume—often washing them down with alcohol. The result can be strokes, heart attacks, brain damage, or even death.

### SAFE DISPOSAL OF DRUGS WITH TAKE-BACK PROGRAMS

Keeping pharmaceuticals out of the hands of those who might abuse or accidentally misuse them is easier when people know how to safely dispose of their unwanted and expired prescriptions and can do so quickly and easily. Organizations such as NACWA have long advocated for easily accessible drug take-back programs—the disposal method that best protects public health and

**Small seemingly innocuous [actions], when multiplied, can lead to overwhelming drug abuse problems.**

### IT’S ALL ABOUT (UNAUTHORIZED) ACCESS

Preventing improper access to prescription drugs is the key to a larger solution. When painkillers and other drugs are prescribed, patients often have medication left over—either the prescribed amount was more than needed, a side effect prevented the patient from taking it all, or the drugs expired before they were used. Too often, people let unused medication sit in their medicine cabinets at home, or they place them in the trash, unwittingly creating the risk of misuse by curious children, confused elderly, individuals suffering from addiction, or even pets.

Small, seemingly innocuous instances such as these, when multiplied, can lead to overwhelming





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the environment. These can take the form of a one-day event, mail-back envelopes, or a (ideally) permanent kiosk. Take-back programs collect drugs in a secure manner and then use incineration, the best available technology, to render them unrecoverable.

Take-back programs are a low-cost, easy-to-implement way to decrease the amount of illegal diversion, accidental poisoning, and damage to aquatic environments. Wastewater treatment plants, also known as publicly owned treatment works (POTWs), were not designed to remove pharmaceuticals from wastewater. Although

some treatment or removal may occur in POTWs, drugs that are flushed can still pass through the POTW and be discharged into receiving waters. Drugs that are landfilled end up in leachate, which either leaks into groundwater or is transported to wastewater treatment plants.

There were many hurdles to establishing take-back programs in the past, including regulation that did not allow pharmacies—the most logical place to drop off unused drugs—to set up collection receptacles. Mixed public messages also did not help. Some federal agencies, water organizations, and other groups urged people to drop off their unused drugs at twice-a-year Drug Enforcement Administration (DEA) take-back events, while others recommended mixing unused drugs with kitty litter or coffee grounds and putting them in the trash. The Food and Drug Administration (FDA) even called for flushing the most dangerous drugs down the toilet.

Fortunately, many changes have occurred over the last five years to make drug take-back programs more viable. Federal rules and regulations have eliminated flushing and landfilling as recommended disposal options in most cases. The DEA made changes to its rules that enable pharmacies to voluntarily set up collection receptacles. Pharmacies such as Walgreens and CVS have responded by adding collection receptacles in many of their stores, with Walgreens alone collecting over 270 tons of medication since 2016. However, there is still a question about who should be responsible for managing and funding these programs, a role that has traditionally fallen to government and taxpayers.

### **NEW EXTENDED PRODUCER RESPONSIBILITY LAWS ADDRESS DISPOSAL**

The current drug addiction crisis has provided a compelling reason for lawmakers to consider legislation that establishes sustainable funding for the safe disposal of unused pharmaceuticals.



Extended producer responsibility (EPR)—the idea that manufacturers of products are responsible for the lifecycle costs of their products by funding and running safe disposal programs—has caught on at the state level. Groups such as the Product Stewardship Institute (PSI) and the National Stewardship Action Council (NSAC) have successfully advocated for state and local laws that require manufacturers of paint, carpet, batteries, and other products to pay for the collection and disposal of these items.

In 2012, Alameda County, California passed the first EPR ordinance in the US for pharmaceutical disposal. The ordinance requires that manufacturers set up and pay for disposal kiosks that are “convenient and adequate to serve the needs of Alameda County residents.”

Manufacturers are also responsible for promoting the kiosks through public outreach and for destroying the drugs collected. The ordinance was strongly opposed by pharmaceutical manufacturers before it passed, and after it passed, they filed a lawsuit to block its implementation. The law was upheld by the District Court, and then the 9th Circuit Court of Appeals and, finally, the Supreme Court declined to hear the case, which paved the way for other counties and cities to pass their own “producer pays” ordinances for pharmaceutical take-back programs.

### SHIFTING RESPONSIBILITIES

After failing to stop EPR drug take-back programs in the courts, pharmaceutical manufacturers tried another tactic in New York. The manufacturers supported a state bill that required New York chain pharmacies and

consumers to pay for drug take-back programs, with the manufacturers paying nothing. The bill ignored residents of rural areas without chain pharmacies and pre-empted an existing producer-pays county ordinance for drug take-back. The bill unanimously passed the New York Senate and Assembly. Despite the bill’s bipartisan and industry support, Governor Cuomo vetoed the bill in response to outcries from a wide range of other stakeholders, calling on the Department of Environmental Protection to study the practicality of pharmaceutical EPR for New York State.



A new bill requiring pharmaceutical manufacturers to be responsible for drug take-back programs was signed by Governor Cuomo on July 10, 2018. California and Washington State also passed EPR drug take-back laws in 2018, with California’s law additionally requiring EPR for the disposal of medical

sharps. These states already had multiple local drug take-back ordinances in place prior to the passing of the state law. Vermont and Massachusetts also have product stewardship provisions in substance abuse prevention laws that were passed in 2016.

### TAKING PHARMACEUTICAL EPR TO THE NEXT LEVEL

Drug take-back laws may be taking a similar path as plastic microbead laws a few years ago. After several well-publicized studies about plastic microbeads found in the Great Lakes and other waters, a patchwork of state and local laws began banning the sale of cosmetic products containing plastic microbeads. A federal law banning microbeads was soon introduced, and the Microbead-Free Waters Act of 2015 sailed through Congress without opposition from product manufacturers, being signed by

President Obama in late 2015.

With the current opioid drug abuse crisis, it seems possible that a pharmaceutical EPR law could pass at the federal level. Rather than facing a multitude of different state and local laws each establishing drug take-back programs with different requirements, pharmaceutical manufacturers may eventually support a uniform, federal program. Drug take-back programs alone won't solve the

problems of drug abuse and accidental poisoning or the impacts of pharmaceuticals on our water bodies. But providing safe disposal options for leftover drugs is a low-cost way to help prevent these serious problems. 💧

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## Could EPR for Wipes be Next?

**W**ipes that are flushed can cause or contribute to the clogging of pipes, pumps, and other equipment in collection systems and treatment plants, wasting utility resources and potentially leading to sewage overflows.

Could wipes take a similar legislative path as drug take-back programs and plastic microbeads, with local and state legislation eventually leading to federal legislation? So far, wipes look to be on a familiar path.

In 2016, the District of Columbia (DC) became the first US jurisdiction to pass a law regulating the labeling of wipes. Just as pharmaceutical manufacturers fought the Alameda County drug take-back ordinance in court, Kimberly-Clark Corp. filed a lawsuit to halt the DC wipes law. Kimberly-Clark received a temporary delay in the law's implementation, and the issue will

be resolved by the court after the DC regulations are finalized.

The wipes industry also fought a proposed wipes law in Maryland and—in a situation parallel to the passing of New York's drug take-back law—has tried to shape a proposed New Jersey wipes law such that the final flushability requirements would actually be the wipes industry's own inadequate guidelines.

The fight for EPR drug take-back programs at the local and state level has taken years, with significant state-level success finally achieved in 2018 with the California, New York, and Washington laws. The fight to

ensure that wipes manufacturers are responsible for the fate of their products—providing clear “Do Not Flush” instructions for non-flushable wipes and ensuring that wipes labeled “flushable” will not harm sewer systems—may also take time, but it is an important fight that can be won.

