



Agenda Report

TO: CCCSWA BOARD OF DIRECTORS

FROM: LOIS COURCHAIINE, PROGRAM MANAGER

DATE: JULY 16, 2010

SUBJECT: EXPANDED POLYSTYRENE TAKE OUT CONTAINERS – WHAT OTHER JURISDICTIONS ARE DOING

SUMMARY

The problematic nature of Expanded Polystyrene (EPS) food take-out containers and plastic bags has been presented to and discussed by Board members earlier this year. As a result of those discussions, staff was directed to bring additional information back for consideration and discussion over the following months. Previous reports to the Board of Directors highlighted issues created by the use and disposal of EPS takeout containers. This report outlines information on what other communities are doing about EPS takeout food packaging, with emphasis on the Greater Bay Area region, as requested by the Board.

RECOMMENDED ACTION

1. This report is intended to provide the Board with information and points for potential discussion. No Board action is requested at this time.

DISCUSSION

Expanded polystyrene (e.g. Styrofoam) is light, durable, inexpensive, and has superior insulating properties; making it a favorite for prepared food takeout containers. And, according to the plastics industry, the manufacturing of these containers uses approximately 30% less resources than its alternatives.

First utilized in the restaurant industry for carry-out in the early 1960's¹, EPS garnered wide acceptability within the retail food industry, especially due to the growing popularity of "fast food." However, EPS food packaging materials, especially those from the fast food industry, are now viewed as a major contributor to unsightly litter and marine pollution. According to a Cal Trans study, EPS now represents approximately 15% of litter collected from California's storm drains. And during annual coastal cleanups, around 11% of materials collected are EPS.

The disposal problems, associated with the usage of large amounts of this product, have been outlined to the Board in previous staff reports. Recognizing these problems, many jurisdictions have taken steps to minimize the effects of disposal of EPS. While fees have been considered in some places, outright bans appear to be the strategy that is most popular.

¹ http://www.ehow.com/about_5373104_were-styrofoam-cups-invented.html

International and National Actions

Internationally, China banned EPS food containers in 1999, as did Taiwan in 2003. Although several Canadian cities are considering bans, their focus is on recycling. In Europe, EPS packaging falls under a directive that mandates a 55% recycling rate for all packaging, including EPS takeout food containers². Information on European EPS bans, if any, was unavailable.

Throughout the U.S. many jurisdictions are banning Styrofoam carry-out containers, or at least considering a ban. The table below sets forth the larger jurisdictions that have, or are considering, bans on EPS. While this list is far from complete, the jurisdictions shown are those where information is readily available.

Chart 1 - List of United States Expanded Polystyrene Bans

Ban Enacted	Ban Considered
Freeport, Maine	Boston, Massachusetts
St. Paul, Minnesota	Chicago, Illinois
Rahway, New Jersey	Freeport, Maine
Westchester, NY	Honolulu, Hawaii
Issaquah, Washington	New York City, New York
Seattle, Washington	Suffolk County (Long Island), New York
	Philadelphia, Pennsylvania

California Actions

During the 2006 State legislative session, a bill was introduced which would have prohibited state facilities from selling, using, or distributing EPS food containers. AB 1886 died in the Assembly appropriations committee shortly after its introduction. In early 2009, California introduced legislation that would have banned all polystyrene—not just, but also including EPS carry-out containers—throughout the State. AB 1358 (Hill) would have required that EPS be replaced with compostable (e.g. paper, bio-plastics, bagasse, etc.) or recyclable materials (e.g. plastics 1-5, aluminum, etc.) However, as the bill proceeded through the legislative process, it was completely re-written to exclude any reference to EPS or takeout food packaging.

Currently, California is seeing a proliferation of municipal EPS regulations being enacted or considered. This approach means that requirements for single-use food ware may vary from city to city. For example, a food vendor that sells prepared food at a farmers’ market in Alameda or Berkeley cannot use EPS containers, but that same vendor can in Walnut Creek. Furthermore, some jurisdictions, such as Del Rey Oaks, banned all types of polystyrene carryout containers (#6); which include both expanded foam and rigid plastic (e.g. clear clamshells and red plastic soda cups). There is little consistency in the approach that communities take in banning EPS.

In researching the topic of EPS bans in California, staff found that there are three different types: bans on all polystyrene, including the rigid type; bans on EPS only; and partial bans. The “partial” bans (listed in the chart below) usually indicates that the ban applies to the city or county facilities and does not allow the municipal entity or agent to purchase or provide polystyrene carryout containers. For example: the City of San Jose’s ban, enacted in 2009, does not allow EPS food containers at any special event held on city property with an attendance over 1,000 per day. And San Mateo’s ordinance also prohibits the use of EPS at special events, as well as the purchase by the County or its agents.

Chart 2 - List of California Expanded Polystyrene Actions to Date

² http://ec.europa.eu/environment/waste/packaging_index.htm

Bans on all Polystyrene Food Ware	Ban on <i>Expanded</i> Polystyrene Food-ware (Styrofoam)	Partial Bans	Considering Bans
City of Del Rey Oaks	City of Alameda	City of Alisio Viejo	City of Arcata
City of Laguna Beach	City of Berkeley	City of Huntington Beach	City of El Cerrito
City of Millbrae	City of Calabasas	City of Laguna Woods	City of Livermore
City of Monterey	City of Capitola	City of Laguna Hills	City of Milpitas
City of Richmond	City of Carmel	City of Los Angeles	City of San Pablo
City of San Bruno	City of Emeryville	County of Orange	City of San Jose
City of Santa Monica	City of Fremont	<i>City of Pittsburg*</i>	
City of West Hollywood	City of Hercules	City of San Clemente	
	City of Laguna Beach	County of San Mateo	
	City of Malibu	City of San Juan Capistrano	
	County of Marin	<i>City of San Jose*</i>	
	City of Newport Beach	<i>County of Sonoma*</i>	
	City of Oakland	County of Ventura	
	City of Pacific Grove		
	City of Pacifica		
	City of Palo Alto		
	City and County of San Francisco		
	City and County of Santa Cruz		
	City of Scotts Valley		

* Ordinance was unavailable

Bay Area Actions

In the Bay Area, EPS was first banned by the City of Berkeley in 1990. Their ordinance is administered by the City’s Toxics Management Division in their planning department. Publicity and outreach for the EPS foam take-out food container ban includes point-of-sale notices for the general public. Pledges of compliance are required from food service establishments and suppliers. Berkeley’s enforcement is under their municipal code and carries a fine of not greater than \$1,000 per day.

Oakland enacted its ban in 2007. Oakland’s ban allows food vendors to use only biodegradable or compostable materials. Recyclable materials (e.g. plastic) cannot be used as an alternative. Additionally Oakland allows an exemption for prepared food packaged outside the City limits. Enforcement includes an initial written warning followed by escalating fines of \$100 and up. Oakland’s initial public outreach seemed to be minimal with one meeting held by the City that was attended by Chambers of Commerce and restaurateurs.

San Francisco does allow food purveyors to use recyclable plastic, but does not allow prepared food from another area packaged in EPS to be sold in San Francisco. Enforcement in San Francisco includes a written warning and then escalating fines between \$100 and a maximum of \$250 dollars.

The City of Alameda’s EPS food-ware ban was implemented in 2008 and requires that compostable or biodegradable materials only be used. Plastic alternatives can only be used where a financial hardship can be proven to the City Manager. Enforcement is on a “complaint basis” only, with a first violation’s fine set at

\$250. Prior to the ban being enacted, a series of workshops for affected businesses were held with a total participation of 60 people.³

The City of Emeryville's ordinance also became effective in 2008 and mirrors Berkeley's. Replacement products may be purchased made of compostable, biodegradable, or recyclable materials. However, exemptions are made for food that was packaged or prepared outside the city limits, or for financial hardships. Enforcement includes a written warning followed by escalating fines.

The City of Hercules passed a ban on EPS-only in 2008. The ordinance bans the use of EPS for the purpose of one time use either on or off the food vendors' premises. It also eliminates the use of EPS products at all city sponsored events and facilities. The City Manager, or his/her designee, is authorized to enforce the ordinance and issue fines for violations if a citizen complaint is verified and not remedied. Food vendors can be exempted for specific items or types of disposable food service utensils if their city manager finds that a suitable and/or affordable biodegradable or compostable alternative does not exist or that imposing the requirements of the ordinance on that item would cause undue hardship.

The City of Millbrae adopted a ban on all polystyrene takeout food packaging in 2008. Staff took great efforts to ensure that adequate preparation for the ban was accomplished beforehand. These efforts included: two information reports to the City council to prepare them for industry opposition; postcards and flyers were distributed to businesses; and discussions with the chamber of commerce. Enforcement is complaint driven and, according to the ordinance, violators are guilty of an infraction of their Municipal Code and their city attorney may seek legal, injunctive or other relief.

In 2009, the City of Palo Alto went to great lengths to ensure the viability of their ordinance. The ordinance project report is quite lengthy and includes an impact analysis and a mitigation report. The ordinance covers both EPS and rigid polystyrene containers and pertains to all prepared food vendors within the city limits. The city manager may exempt certain food vendors if they can show undue hardship. Violators are considered guilty of an infraction of the Palo Alto Municipal Code.

Marin County began prohibiting EPS and all plastic takeout containers on July 1, 2010, both at governmental facilities and private businesses. All alternative food service ware must be organic in nature (e.g. compostable plastic, bagasse, paper, etc.). There is no provision in the ordinance for hardship, or other exceptions. Enforcement includes penalties of no less than \$50 and not greater than \$1,000 or up to six months in jail.⁴

Richmond passed their EPS carryout container ban earlier this year. In the related staff report, Richmond staff cited the 2009 California Regional Water Quality Control Board's new storm water quality permit requirements; which include a 70% reduction in water borne trash by 2017 and 100% reduction by 2025. Costs for installation of trash capturing equipment are anticipated to be around \$500,000 each. However, in discussions with Contra Costa County Clean Water Program staff, they expect the majority of trash cleanup costs to be related to the regular maintenance (e.g. cleanout) of that equipment. These State trash reduction requirements, and their costs, underscore the potential benefit of banning EPS take-out containers, because of the large amount of EPS carryout containers that are littered in the area. Richmond implemented extensive outreach to the prepared food industry prior to enacting the ban. Workshops, one-on-one meetings and mailed literature were used to interact with the restaurant community. Richmond's enforcement mechanism is by complaint and under their tiered administrative citation process.

3 www.ci.alameda.ca.us/archive/2007/attachments/cc_sub_465.pdf

4 http://search.municode.com/html/16476/level2/T7_C7.24.html#T7_C7.24_7.24.060

5 Lindsey, Bill: City of Richmond Agenda Report #J-2, October 20, 2009.

The City of Fremont, whose EPS ban becomes effective on January 1, 2011, estimates that 15% of their litter collected from storm drains is EPS. They also state that the ban could further reduce the amount of materials disposed in the landfill. The City of Fremont also attempted to interface extensively with the business community to obtain their feedback on the proposed ban. In-person meetings, phone calls, and surveys were used for this purpose. Enforcement of Fremont’s ordinance is based on complaints and existing annual inspections. Fines range from \$100 for the first offense to \$500 for the third and any subsequent violations.

Sonoma County’s ordinance prohibits any person from willfully possessing, giving, receiving, lending, offering or exposing for sale, delivering, furnishing, transferring or disposing of polystyrene foam food packaging on county premises. The penalty is a fine not exceeding \$250.

Considerations

While there are both costs and benefits to implementing an EPS ban, doing so may have unintended consequences. For example: compost capacity in the Bay Area is currently very limited. Any ordinance that would require compostable products only to be used in place of EPS stands the potential of creating an overabundance of demand requiring capacity for those types of programs. Without the infrastructure to increase composting capacity, these types of bans may fail to provide the results expected and could have a detrimental effect on other waste diversion programs. For example: if compostable products were the only type used, and if there was not sufficient capacity for composting, then the material would probably be landfilled. Moreover, most compostable plastics do not decompose over the same time-frame (compostable plastics take much longer) as green waste in the technology widely used for green-waste composting. This is a problem for the composters that receive green-waste from municipal collection.

In reviewing the literature for this report, staff found that only two jurisdictions (listed below) accounted for the actual costs for implementing a city ban on EPS. Although the costs are moderate, these jurisdictions considered costs in the planning and budgeting process.

Chart 3 – Estimated Municipal Costs for Implementing an EPS Ban

Item	Richmond’s Cost	Millbrae’s Cost
Staff Time	\$7,000	\$13,500
Printing and Postage for Outreach Materials	\$1,530	\$1,800
Total Cost (Estimated)	\$8,530	\$15,300

Conclusion

The 2008 San Francisco Litter Audit revealed a 36% reduction in polystyrene litter since the material was banned there in 2007.⁶ Overall though, it is difficult to estimate the tonnage of EPS materials diverted from the solid waste stream as a result of these programs. Keeping these materials out of the landfill, and increasing public awareness about the potential problems posed by the purchase, use and disposal of these materials nevertheless provides important benefits in terms of litter abatement and environmental sustainability.

⁶ The 2008 San Francisco Litter Audit revealed a 36% reduction in polystyrene litter since the material was banned there in 2007.