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CITY OF OAKLAND



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May 1, 2008

RULES AND LEGISLATION COMMITTEE
Oakland, Ca.

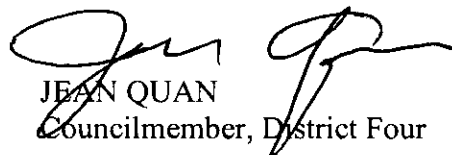
Chairperson De La Fuente and Members of the Rules and Legislation Committee:

SUBJECT: RESOLUTION IN SUPPORT OF AB 2505 (BROWNLEY) – “TOXIC PACKAGING PHASE OUT” WHICH WOULD PREVENT HUMAN AND ENVIRONMENTAL EXPOSURE TO TOXINS AND ENCOURAGE RECYCLING OF PACKAGING BY PHASING OUT USE OF TOXIC, NONRECYCLABLE POLYVINYL CHLORIDE (PVC) PACKAGING

I am submitting the attached resolution in support of AB 2505 for your review and approval. If approved by the state legislature, AB 2505 would prevent human and environmental exposure to toxins and encourage recycling of packaging by phasing out use of toxic, non-recyclable polyvinyl chloride (pvc) packaging.

I have asked our Environmental Services staff to prepare a detailed analysis of AB 2505 for your supplemental packet.

Respectfully submitted,


JEAN QUAN
Councilmember, District Four

AB 2505

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Date of Hearing: April 15, 2008

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Jared Huffman, Chair

AB 2505 (Brownley) - As Amended: April 7, 2008

SUBJECT : Polyvinyl Chloride (PVC) Packaging Containers:
Prohibition

SUMMARY : Prohibits, on and after January 1, 2010, with specified exceptions, the sale or distribution in commerce of polyvinyl chloride (PVC) packaging. Specifically, this bill :

1. Prohibits, on and after January 1, 2010, a person from selling or distributing in commerce in this state a polyvinyl chloride (PVC) packaging container.

2. Defines "polyvinyl chloride packaging container" as used to contain, hold, protect, or display another product, along or in combination with other materials, that may be flexible or rigid, and:

- a) Is comprised predominantly of PVC plastic resin, and
- b) Is shaped as sac, cup, bottle, bowl, box, clamshell or other shape, including blister pack.

1. Exempts from this definition a container used to contain:

- a) A petroleum product, including a fuel or lubricant,
- b) A prescription or over-the-counter human or veterinary drug, as defined in state or federal law, or
- c) A medical device as defined in state law, including diagnostic or treatment instruments, apparatuses, implements, or machines.

1. Provides for the imposition of civil penalties of up to \$2,500 per day per violation. The civil penalty may be pursued in any court of competent jurisdiction. Civil penalties are to be deposited in the Hazardous Waste Control Account for expenditure by the Department, upon appropriation, for enforcement.

2. Makes findings and declarations regarding PVC packaging.

EXISTING LAW , the Toxics in Packaging Prevention Act (AB 455,

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Chu, Chapter 679, Statutes of 2003),

- 1) Ban the sale or promotion of packaging that contains one or more specified heavy metals: lead, cadmium, mercury, or hexavalent chromium, if the metals have been intentionally introduced during manufacture or distribution.
- 2) Provides for a limited exemption under specific conditions, including date of manufacture prior to January 1, 2006, or inclusion of metals needed to meet safety standards, etc. Certain exemptions expire on January 1, 2010; others are permanent.

FISCAL EFFECT : Unknown. The bill provides that civil penalties for violations of its provisions are to be deposited in the Hazardous Waste Control Account.

COMMENTS :

1) Purpose of the Bill : According to the author, this law is designed to solve the human and environmental health risks associated with PVC consumer packaging. The author cites a Toxics in Packaging Clearinghouse study that found that much PVC packaging tested contained Lead or Cadmium. Further, they note that PVC is a "potent contaminant" of the plastics recycling stream, reducing California's ability to recycle its plastic waste. They point out that PVC manufacturing plants, such as the Keysor site in Saugus, have been included on the Federal EPA priority list for Superfund clean up.

2) Support : Sierra Club states "PVC packaging is toxic at every stage of its lifecycle and is a human and environmental health risk. [It] contains high levels of toxic additives." The Breast Cancer Fund "strongly supports policies which regulate this substance because it is possible for chemicals to leach out of PVC packaging and on to products that children put in their mouths." The Center for Health, Environment & Justice states PVC is a major contaminant to the Polyethylene Terephthalate (P.E.T.) bottle recycling stream.

3) Opposition : The Consumer Specialty Products Association writes that "no commercially viable alternative materials exist" and that PVC is necessary in packaging in instances requiring stress resistance and impermeability. A variety of opponents, led by the American Chemical Council, write that the bill does

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not require analysis of alternatives (for example, feasibility,

performance, environmental impact or cost). They state that the bill ignores existing authority vested in the Department of Toxic Substances Control to regulate the use of heavy metals in packaging.

4) Policy Issue : At issue is the toxicity of PVC as a packaging agent. Vinyl chloride, a constituent element of PVC, has been classified as a human carcinogen by the EPA. Further concerns relate to contamination with other substances, either advertently or inadvertently, such as lead and phthalates. Target Corporation announced last fall that it is reducing its use of PVC in packaging as well as in children's products.

5) Prior Version of this Bill : The prior version of this bill was modeled on the Toxics in Packaging Prevention Act of 2003. The current version instead uses civil penalties against violations, and provides for a statutory exemption for a very limited number of uses of PVC - for petroleum products, prescriptions and medical devices.

6) Related Legislation : AB 954 (Brownley, 2007), a similar bill, died in this committee without a hearing.

7) Proposed Committee Amendment : The bill's title indicates that it is located in the Health and Safety Code; the Article it creates is located in the Public Resources Code. The bill should be amended to clarify that the exemptions specified for drug and medical device are in the Health and Safety Code; further, the Health and Safety Code is most likely the proper location for these provisions. Also, "sac" should be "sack".

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The committee may wish to amend the bill to clarify that the exemption to the standard applies to petroleum-based products and includes fuel additives.

REGISTERED SUPPORT / OPPOSITION:

Support: As Amended April 7, 2008

Californians Against Waste
MOMS: Making Our Milk Safe

Support : - As Introduced

AFSCME

Breast Cancer Fund
The Center for Environmental Health
Center for Health, Environment & Justice
Global P.E.T., Inc.
GrassRoots Recycling Network
Heal the Bay
City and County of San Francisco
Sierra Club

Opposition: - As Amended April 7, 2008

American Chemistry Council
American Electronics Association
California Business Properties Association
California Chamber of Commerce
California File Extruder & Converters Association
California Grocers Association
California Manufacturers & Technology Association
California Restaurant Association'
California Retailers Association
Chemical Industry Council of California
Industrial Environmental Association
Western States Petroleum Association
Grocery manufacturers Association
Toy Industry Association

Opposition: - As Introduced

Architectural Plastics, Inc.
California League of Food Processors
Carson Manufacturing Company

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Compotite Corporation
Consumer Specialty Products Association
Georg Fischer Piping Systems
MGM Plastics, Inc.
PVC Tech Corp
25 Letters from individuals

Analysis Prepared by : Kate Riley / E.S. & T.M. / (916)
319-3965

AMENDED IN ASSEMBLY APRIL 22, 2008

AMENDED IN ASSEMBLY APRIL 7, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2505

Introduced by Assembly Member Brownley
(Coauthor: Assembly Member Huffman)

February 21, 2008

An act to add Article 10.4.1 (commencing with Section 25214.25) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2505, as amended, Brownley. Hazardous waste: polyvinyl chloride packaging container.

Existing law, the Toxics in Packaging Prevention Act, prohibits a manufacturer or supplier, as defined, from offering for sale or for promotional purposes in this state a package or packaging component that includes specified regulated metals and prohibits a person from offering for sale or for promotional purposes in this state a product in a package that includes those intentionally introduced regulated metals. A violation of the hazardous waste control laws, including the act, is a crime.

This bill would prohibit a person, on and after January 1, 2010, from selling or distributing in commerce in this state a polyvinyl chloride packaging container, as defined.

The bill would provide that a person who violates this prohibition is not subject to the criminal penalties imposed pursuant to the hazardous waste control laws and instead would be liable for a civil penalty not

to exceed \$2,500 per day for each violation. The bill would require the collected civil penalties to be deposited in the Hazardous Waste Control Account, for expenditure by the department, upon appropriation by the Legislature, to implement and enforce this prohibition.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) Polyvinyl chloride (PVC) packaging poses an environmental
4 and human health risk throughout its life cycle.
- 5 (b) PVC production involves the use of vinyl chloride, a known
6 carcinogen, which may pose a health hazard to those in and around
7 manufacturing facilities.
- 8 (c) Many types of PVC packaging contain phthalates, a class
9 of chemicals that have hormone-disrupting effects on humans.
- 10 (d) PVC packaging has been found by the Toxics in Packaging
11 Clearinghouse of the Council of State Governments and others to
12 have a high incidence rate of lead and cadmium heavy metal
13 contamination.
- 14 (e) *The combustion of PVC emits dioxins.*
- 15 (f) PVC packaging is recycled at very low levels.
- 16 (g) PVC is a problematic contaminant in the recycling stream
17 of other, more abundant, nontoxic plastic resins, preventing
18 municipalities from accepting greater quantities of packaging for
19 recycling and preventing municipalities from achieving higher
20 landfill diversion rates.
- 21 (h) When disposed of in a solid waste landfill or as litter, PVC
22 packaging may leach its toxins into the surrounding groundwater.
- 23 (i) Recognizing the threat leached toxins pose on marine
24 wildlife, the Ocean Protection Council recently passed a resolution
25 calling for the banning of vinyl chloride in plastic packaging.
- 26 (j) Alternatives to polyvinyl chloride packaging are abundant,
27 affordable, and are already competitive in the marketplace.
- 28 SEC. 2. Article 10.4.1 (commencing with Section 25214.25)
29 is added to Chapter 6.5 of Division 20 of the ~~Public Resources~~
30 *Health and Safety Code*, to read:

1 Article 10.4.1. Polyvinyl Chloride Packaging

2
3 25214.25. (a) For the purposes of this article, unless the context
4 clearly requires otherwise, “polyvinyl chloride packaging
5 container” means a container that is used to contain, hold, protect,
6 or display another product, alone or in combination with
7 paperboard or other materials, that may be flexible or rigid, and
8 to which all of the following applies:

9 (1) The container is comprised predominantly of polyvinyl
10 chloride plastic resin.

11 (2) The container has the shape of a ~~sae~~ sack, cup, bottle, bowl,
12 box, clamshell, or other package shape, including a blister pack.

13 (b) “Polyvinyl chloride packaging container” does not include
14 any of the following:

15 (1) A container that is used to contain a ~~petroleum~~
16 *petroleum-based* product, including a fuel ~~or a lubricant, a~~
17 *lubricant, a fuel additive, or other petroleum-based product used*
18 *on or in motor vehicles.*

19 (2) A container that is used to contain a prescription or
20 over-the-counter human or veterinary drug, including, but not
21 limited to, a drug as defined in Section 109925 or as defined in
22 Section 321 of Title 21 of the federal Food, Drug, and Cosmetic
23 Act.

24 (3) A container that is used to contain a medical device, as
25 defined in Section 109920.

26 25214.26. On and after January 1, 2010, a person shall not sell
27 or distribute in commerce in this state a polyvinyl chloride
28 packaging container.

29 25214.27. (a) Notwithstanding any other provision of this
30 chapter, a person who violates this article shall not be subject to
31 any criminal penalties imposed pursuant to this chapter and shall
32 only be subject to the civil penalty specified in subdivision (b).

33 (b) A person who violates this article shall be liable for a civil
34 penalty not to exceed two thousand five hundred dollars (\$2,500)
35 per day for each violation. That civil penalty may be assessed and
36 recovered in a civil action brought in any court of competent
37 jurisdiction.

38 (c) Civil penalties collected pursuant to this article shall be
39 deposited in the Hazardous Waste Control Account, for expenditure

OAKLAND CITY COUNCIL

OFFICE OF THE CITY CLERK
OAKLAND

City Attorney

DRAFT RESOLUTION No. _____ C.M.S.

2008 MAY -1 PM 4:41

Introduced by Councilmember _____

DRAFT

RESOLUTION IN SUPPORT OF AB 2505 (BROWNLEY) – “TOXIC PACKAGING PHASE OUT” WHICH WOULD PREVENT HUMAN AND ENVIRONMENTAL EXPOSURE TO TOXINS AND ENCOURAGE RECYCLING OF PACKAGING BY PHASING OUT USE OF TOXIC, NONRECYCLABLE POLYVINYL CHLORIDE (PVC) PACKAGING

WHEREAS, in 2007 the City Council adopted an Extended Producer Responsibility Resolution (Resolution #80390 C.M.S), authorizing the City to pursue extended producer responsibility legislation that will give incentives for the redesign of products to make them less toxic, and shift the cost for recycling and proper disposal of products from local governments to the producer and distributor of the product; and

WHEREAS, AB 2505 (Brownley) would prevent human and environmental exposure to toxins such as phthalates, which mimic human hormones and cause abnormal growth, and heavy metals such as lead and cadmium, which cause brain damage in very small amounts, by phasing out use of nonrecyclable polyvinyl chloride (PVC) packaging; now, therefore be it

RESOLVED: the City of Oakland declares its support for 2505 (Brownley); and be it

FURTHER RESOLVED: that the City Council hereby directs the City Administrator and the City’s legislative lobbyist to advocate for the above position in the California State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California