



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: May 10, 2011 REPORT NO: 11-074
ATTENTION: Natural Resources and Culture Committee
ORIGINATING DEPARTMENT: Environmental Services Department (ESD)
SUBJECT: Regulating Expanded Polystyrene and Bottled Water Products
COUNCIL DISTRICT(S): All
CONTACT/PHONE NUMBER: Stephen Grealy, (858) 573-1275

THIS IS AN INFORMATIONAL ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE COMMITTEE.

BACKGROUND

Over the last few years, numerous cities and counties have taken action to reduce the use and improper disposal of bottled water and expanded polystyrene (EPS) food containers. Driving bottled water restrictions are the resources and energy needed to produce and transport the bottles, the impacts on local aquifers where bottling facilities are located, the lack of health and safety regulation of bottled water, the impact of littered plastic water bottles, and the expenditure of public money, especially when considering the high cost of bottled water compared to tap water and the resources that municipalities devote to ensuring the quality and safety of local tap water.

The properties of EPS, also known as Styrofoam™, make it an inexpensive and effective material for food/beverage containers; however, it is also a persistent and pervasive contaminant in the environment. It is lightweight and easily carried into storm drains and waterways where it contributes to clogging, litters streams and beaches, and negatively impacts wildlife that mistakenly ingest it. Data from semi-monthly beach cleanups conducted by San Diego Coastkeeper and Surfrider indicate that EPS litter on local beaches has increased from almost 10,000 pieces in 2007 to over 25,000 pieces in 2010.

After hearing presentations about these concerns, former City Councilmember and Chair of the Natural Resources and Culture Committee (NR&C), Donna Frye, requested that the City Attorney's office research the legal issues involved with regulating the use of EPS and bottled water.

At the December 1, 2010 NR&C meeting the City Attorney's office presented its findings on Councilmember Frye's request. It was determined by the City Attorney that the City has considerable discretion to restrict the use of EPS and bottled water at City facilities and City-permitted events without violating constitutional due process, equal protection or interstate commerce rights.

The Mayor's office agreed to research both issues for City operations and to develop a strategy for implementing a restriction on both EPS and bottled water.

SUMMARY:

Water Bottle Regulation

The Environmental Services Department (ESD) researched the program implemented at the City and County of San Francisco and incorporated their successes and lessons learned in the proposed policy. ESD also made contacts at the City's largest departments regarding their use of bottled water. Staff found minimal usage of single use water bottles purchased with City funds, but did find that many facilities are in fact using the five gallon water bottle dispensers. Water bottle dispensers are being used at facilities with no potable water as well as at facilities that do have access to potable tap water.

There is a department open Purchase Order through Purchasing and Contracting (Purchasing) with Nestle Waters/Arrowhead that expires on September 18, 2012. The value of the two year agreement is \$85,000. The City-wide FY11 budget for water purchases is \$57,084.

Due to the nature of several City facilities throughout San Diego, an outright ban on the purchase of bottled water by the City is not possible. For instance, in the event that a City facility does not have immediate access to potable tap water an exception to the regulation must be made in order to ensure that City Staff have access to drinking water, as required by the Occupational Safety and Health Administration (OSHA) section 1926.51. Additionally, Department Operations Centers (DOC) requires access to at least a 14 day supply of food and bottled water in the event of an emergency.

ESD Staff suggests the following steps to restrict the purchase of both single use water bottles, and water bottle dispensers using city funds and at city facilities effective January 1, 2012:

- Revise Administrative Regulation (AR) 35.80, Environmentally Preferable Purchasing, to prohibit the purchase of single use water bottles and water bottle dispensers with City funds (see Attachment 1), with the exception of facilities that do not have access to potable tap water.
- Revise the City's Procurement Card Program Policies and Procedures Handbook to be consistent with the revised AR (see Attachment 2).
- Require that exemptions be approved by a Department Director and allow denials to be appealed to the Chief Operating Officer (see Attachment 3).

EPS Regulation

The City does not have a sole contractor for provision of food service ware. Some supplies are ordered through the office supply contract, some cups are ordered through the water bottle dispenser contract, and some purchases are made with a P-card or petty cash. ESD staff contacted the office supply, janitorial supply, and water bottle dispenser vendors and only found one order for foam cups ordered through the office supply contract for FY11 to date. It is not possible to determine how much, if any, was purchased with a P-card or petty cash. ESD staff visited the City's two Central Stores and Storeroom 42, which stocks the fire stations, and did not find any EPS food service ware and minimal EPS packaging waste.

There are two local recyclers that accept clean, source separated EPS for recycling, however, it cannot be put in commingled bins with other recyclables in the City's internal office recycling program. ESD surveyed City departments to find out which were receiving EPS waste packaging materials to determine where recycling programs might be feasible and is working with City departments and vendors on reducing use and developing a recycling program for locations that have a need.

ESD suggests the following steps to minimize and manage EPS at City operations and City-permitted events effective January 1, 2012:

- Revise AR 35.80 to prohibit the purchase of EPS food service ware with City funds (see Attachment 1).
- Revise the City's Procurement Card Program Policies and Procedures Handbook to be consistent with the revised AR (see Attachment 2).
- Develop standard language to be used in all bids that expresses the City's commitment to eliminating EPS in packing materials, using alternative recyclable packing materials when available, and/or vendor take back of packing material (see Attachment 4).
- Work with vendors on current contracts to reduce/eliminate EPS packing material or ensure that it is recycled.
- Implement EPS recycling at those locations that receive significant quantities of EPS and cannot be eliminated by the vendor.
- Revise City permit applications, including special events, parks and recreation facilities, and water reservoirs and lakes, to prohibit the use of EPS food service ware.

FISCAL CONSIDERATIONS:

As aforementioned, the current contract value for both single use and five gallon water dispensers is \$85,000 with the FY11 budget for water at \$57,084. Although ESD anticipates exemptions in several areas, it is expected that this cost will be considerably reduced given the nature of this policy.

Based on the research conducted, the City currently purchases very little EPS food service ware on any contracts. Although EPS food service ware is often the least expensive option, non-EPS food service ware made from paper or plastic is competitively priced and would not increase costs given the small amount that is purchased.

Modifying existing permit applications to prohibit disposable EPS food service ware would not incur additional costs, other than staff time to edit the documents, and would not require any additional enforcement actions beyond those that are currently employed to ensure compliance with existing permit requirements. The municipal code would not need to be amended to modify the permits and there would be no additional fees levied. Event organizers would be notified if a violation is observed and provided the necessary education to ensure compliance at future events.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): Not applicable.

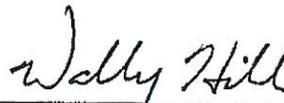
PREVIOUS COUNCIL and/or COMMITTEE ACTION: At the request of Councilmember Donna Frye, the City Attorney's Office made a presentation and submitted a report to the Natural Resources and Culture (NR&C) Committee regarding legal issues associated with regulating Styrofoam™ and bottled water on December 1, 2010. NR&C requested that the Mayor's Office look into current City use and come back with recommendations in February. The Mayor's Office made an informational presentation to the NR&C Committee on February 2, 2011 to update on the status of research into possible options for reducing bottled water and EPS and proposed returning in April with recommendations.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None

KEY STAKEHOLDERS AND PROJECTED IMPACTS: City departments and organizers of City-permitted events.



Chris Gonaver
Environmental Services Director



Wally Hill
Assistant Chief Operating Officer

- Attachments:
1. Recommended Draft Revisions to AR 35.80
 2. Recommended Draft Revisions to Procurement Card Program Policies and Procedures Handbook
 3. Draft Bottled Water Exemption Form
 4. Recommended Draft Standard Bid Language

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1.0 PURPOSE

1.1 The purpose of this Administrative Regulation (A.R.) is to establish guidelines and procedures for purchases of environmentally preferable products and services.

2.0 SCOPE

2.1 This regulation applies to all City of San Diego departments and employees who purchase equipment, products and/or non-professional services or develop specifications for equipment, product or non-professional services for department/division purchases. This regulation applies to all purchases and shall utilize existing purchasing procedures as set forth in A.R. 35.10 Purchasing Goods and Services.

3.0 DEFINITIONS

3.1 Environmentally Preferable

“Environmentally Preferable” means having a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. Environmentally Preferable products or services minimize the consumption of resources, energy and water; prevent or minimize the creation of solid waste, air pollution or water pollution; minimize the use of materials or processes which compromise the environment; and/or promote the use of less or non-toxic substances, and avoid toxic materials or processes.

4.0 RESPONSIBILITY

4.1 The Environmental Services Department and Purchasing and Contracting Department have major responsibility for implementing this Administrative Regulation throughout all City departments.

(~~New~~ Supersedes Administrative Regulation 35.80, Issue 1, effective April 4, 2007)

Authorized

CHIEF OPERATING OFFICER

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5.0 POLICY

5.1 City departments shall purchase Environmentally Preferable Products or non-professional services whenever possible by taking into consideration appropriate environmental attributes or benefits along with price and performance standards.

5.2 The following items are prohibited from purchase:

- a. Bottled water without an approved exemption waiver
- b. Expanded polystyrene foam food service ware

~~5.25.3~~ Twelve basic Environmentally Preferable characteristics shall be used in evaluating whether a given product or non-professional service is Environmentally Preferable. A product or service may exhibit one or more of these characteristics. While it is unlikely that one product or service will exhibit all twelve characteristics, the goal is to meet as many characteristics as possible. Definitions for the twelve characteristics are included in Exhibit 1.

Following are the twelve characteristics:

- a. Alternative Energy Source
- b. Bio-based
- c. Biodegradable
- d. Compostable
- e. High Recycled Content
- f. Low Toxicity
- g. Low Volatile Organic Compound (VOC)
- h. Pollution (air, water, solid waste) Reduction
- i. Recyclable
- j. Repairable
- k. Resource Efficient (water conserving and/or energy efficient)
- l. Reusable

~~5.35.4~~ The following principles shall be considered for purchases by all City departments:

5.4.1 Utilizing the Environmentally Preferable Purchasing (EPP) Evaluation Checklist (Exhibit 3), evaluate the environmental attributes of various products and non-professional services. Products that score favorably will reduce the impact of City operations on the local environment and the health of the residents of San

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Diego;

5.4.2 Justification must be provided on the Sample Procurement Justification Form (Exhibit 2) if the Environmentally Preferable product and/or services are not selected for use.

5.45.5 It is the responsibility of designated Department staff to take the necessary steps to ensure that the guidelines and administrative procedures contained herein are strictly adhered to.

6.0 PROCEDURES

Responsibility

Action

Purchasing & Contracting Department
and Environmental Services Department

6.1 Provide City departments with information and training to facilitate their evaluation and purchase of designated commodities and non-professional services.

6.2 Provide minimum recycled content standards based on program outcomes, to be revised as necessary to meet the product preferences consistent with guidelines and regulations promulgated by the United States Environmental Protection Agency, the State of California, and other Federal and State agencies.

All City Departments & Divisions

6.3 City departments and divisions shall:

- a. Provide designated staff with access to information and training regarding the Environmentally Preferable Purchasing Program (EP³).
- b. Provide a list of the most commonly purchased products and non-professional services, as well as those requiring a significant expenditure, to

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ESD’s EP³ Coordinator for review and recommendation of Environmentally Preferable options.

- c. Revise internal purchasing and contracting procedures as needed to optimize the application of EP³.
- d. Prior to preparing specifications for any product or non-professional service, conduct an evaluation based on the twelve Environmentally Preferable characteristics listed in Section 5.2. (Exhibit 3: Sample EPP Evaluation Checklist).
- e. Transmit evaluation results to Purchasing & Contracting Department along with product or service specifications. If an Environmentally Preferable product and/or service is not selected for use, include a written explanation or statement of justification.
- f. Compile data on the purchase of products and non-professional services that meet EP³ criteria.
- g. Transmit procurement data to the Purchasing & Contracting Department for inclusion in an annual report to the Mayor on the status of A. R. implementation.

Purchasing & Contracting Department
and Environmental Services Department

6.4

Present an annual report to the Mayor that tracks the implementation of this A.R and includes the following:

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- a. Quantities, costs, and types of recycled and other Environmentally Preferable products and non-professional services purchased.
- b. A summary of savings achieved through the purchase of recycled and other Environmentally Preferable products and non-professional services.
- c. A summary of program promotional efforts.
- d. Recommendations for changes in procurement policy.

APPENDIX

Legal References

SDMC §§ 22.3201et seq.
Council Policy 100-14
Council Policy 000-19
Council Policy 900-14
Council Policy 900-18
A.R. 35.10

Forms Involved

Sample Procurement Justification Form
Sample EPP Evaluation Checklist

Subject Index

Purchasing
Purchasing, Environmentally Preferable

Administering Departments

Purchasing & Contracting Department
Environmental Services Department

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EXHIBIT 1

To provide guidance to City staff in evaluating the purchase of Environmentally Preferable products and non-professional services for City use, the following definitions shall apply:

DEFINITIONS

- A. "ALTERNATIVE ENERGY" refers to other forms of energy that are capable of doing the same work as traditional forms of energy. Example: solar power, wind generators.
- B. "BIO-BASED" refers to commercial or industrial products (other than food or feed) that utilize biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials. Example: integration of plant/animal-based fertilizers into an Integrated Pest Management (IPM) landscape maintenance contract.
- C. "BIODEGRADABLE" refers to materials or products which are capable of being decomposed by natural biological processes. Example: biodegradable detergent.
- D. "COMPOSTABLE" refers to products that are comprised of cellulose-containing materials that can be broken down into compost when subjected to biological degradation. Example: compostable tableware and flatware, brush, leaves, tree trimmings.
- E. "ENERGY EFFICIENT" refers to using less energy/electricity to perform the same function. Example: low wattage light bulbs, low-energy dryers. Refer to the US EPA's Energy Star ratings for energy efficient products (www.energystar.gov).
- F. "ENVIRONMENTALLY PREFERABLE PRODUCTS" refers to products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. These products minimize the consumption of resources, energy, and water; prevent the creation of solid waste, air pollution or water pollution; minimize the use of materials or processes which compromise the environment; and/or promote the use of non-toxic substances and avoid toxic materials or processes.
- G. "LIFE CYCLE COSTS" refers to the cost of a product over its entire lifetime.

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- H. "LOW TOXICITY" refers to a decrease in the amount of toxic chemicals used in making a product. Example: water-based paint instead of lead paint, alcohol-based thermometer instead of mercury-based thermometer.
- I. "LOW VOLATILE ORGANIC COMPOUNDS" (VOC) refers to products with a low amount of volatile organic compounds. Example: paint, aerosol sprays, solvents.
- J. "POLLUTION REDUCTION" refers to conserving finite natural resources and preventing waste and harmful substances from contaminating the environment. Example: low emission systems, minimum fuel consumption.
- K. "RECYCLABLE" refers to a product which, after its intended use, can demonstrably be diverted from the solid waste stream for use as a raw material in the manufacture of another product. Example: aluminum cans, bottles, newspapers, etc.
- L. "RECYCLED CONTENT" refers to a percentage of post-consumer recycled materials, defined as products generated by businesses or consumers which have served their intended end uses, and which have been separated or diverted from the solid waste stream for the purposes of collection, recycling, and disposition. Guidelines contained in the U.S. EPA's Recovered Materials Advisory Notices (see www.epa.gov/cpg/) should be used when ordering recycled content products. Example: paper and non-paper products, retread tires.
- M. "REPAIRABLE" refers to products that can be rebuilt or repaired and used again. Example: "take back" programs where the vendor will take back and repair, refurbish or recycle tools.
- N. "REUSABLE" refers to products that are used more than once, replacing single-use products. Example: reusable oil filter, refillable toner cartridge, refillable pens and pencils, reusable packaging.
- O. "WASTE REDUCTION" refers to the efficient use of all resources, so as to reduce the amount of waste. Example: minimal product packaging.
- P. "WATER CONSERVING" refers to products that use water efficiently (sparingly and only when necessary) and reduces water waste. Example: low-flow showerheads and toilets.

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EXHIBIT 2

**Environmentally Preferable Purchasing
Sample Procurement Justification Form**

Product/Service: _____

Please check all that apply:

- I have considered the Environmentally Preferable Purchasing guidelines and procedures as outlined in Administrative Regulation _____ and have searched for product or service options that meet them.
- Compliance with Administrative Regulation _____ was not attainable for this purchase because:
 - Product or service is not available within a reasonable period of time.
(Date needed: _____ Date available: _____)
 - Product or service fails to meet a performance standard in the specifications.
Specifically: _____

 - Product or service is not available, or is not available from two or more sources.
 - Product or service was only available at an unreasonable price.
Price of EPP product or service: _____
Price of non-compliant product or service: _____
 - Compliance would conflict with state or federal law requiring that:

Signature of Purchaser

Printed Name of Purchaser

Date

ATTACHMENT 1

**CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION**

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EXHIBIT 3

EPP Evaluation Checklist
(attached)

DRAFT

ATTACHMENT 2

Proposed Revisions to pages 4-5 of Procurement Card Program Policies and Procedures Handbook:

P-CARDS SHALL NOT BE USED FOR:

- Service or maintenance expenses, including but not limited to janitorial, landscape, plumbing, or facility maintenance costs.
- Items or services under contract, other than those contracts in which the procurement card is specifically established as a payment mechanism in the Contract Terms and Conditions (i.e., office supplies, office paper products, printer toner cartridges, automotive parts, etc.).
- To pay for construction work, including but not limited to repair, improvements (including painting), or demolition.
- Materials for CIP projects.
- Consultant expenses, including but not limited to design/engineering, medical, legal, financial, or training.
- Bars, taverns, nightclubs, cocktail lounges, alcoholic beverage package stores, beer, wine, or liquor.
- Gift cards, incentive coupons, movie tickets or cash advances of any type.
- Gas or oil for personal, leased, or City-owned vehicles.
- Purchases from any source in which the purchaser has a direct or indirect financial interest that has a potential conflict of interest as defined by City Policy.
- Cash refunds. Merchandise returns or other adjustments must be applied back to the same card.
- Waste clean-up or disposal of hazardous materials, including supplies containing hazardous substances, regardless of type or size of job.
- Capitalized equipment with cost of \$5,000 or more, including tax, shipping, and handling.
- Rental or lease of land or buildings, including rental of meeting space.
- Commodities which require structured contracting procedures such as formal bidding, negotiated bids or proposal solicitations.
- Items available from Central Stores, unless the warehouse is out of stock and an emergency situation exists. Out of stock status and emergency situation must be documented and verifiable.
- Purchases to acknowledge personal events in employee's lives, such as birthdays, weddings, the birth or adoption of a child, death of a family member, illnesses, etc.
- Departments must request a purchase order/contract for repetitive purchases for similar items over a period of time with an aggregate cost exceeding \$5,000 from the same supplier in a single fiscal year.
- Bottled water unless approved by an exemption waiver
- Expanded polystyrene foam food service ware

ATTACHMENT 3

Blanket Exemptions

1. Emergency Response Situations
 - a. Police Department
 - b. Fire Department
 - c. Department Operations Center(s)

In the event of an emergency situation and for the purposes of Department Operations Centers, an exemption must be made to provide water to Staff and to citizens when necessary

2. Lack of Potable Water

For City Facilities that do not have potable tap water, an exemption must be made in order to provide staff with potable water pursuant to:

- *OSHA states: GISO 3457: Potable water shall be provided during working hours and placed in locations readily accessible to all employees. Access to such drinking water shall be permitted at all times. The water shall be fresh and pure, suitably cool, and in sufficient amounts, taking into account the air temp, humidity, and the nature of work performed, to meet all employees.*

3. Facilities at which the only accessible potable water is from a restroom sink

ATTACHMENT 4

Standard EP³ bid language

Environmentally Preferable Purchasing

City of San Diego Administrative Regulation (AR) 35.80 outlines the City's Environmentally Preferable Purchasing Program (EP³). EP³ requires all City Departments to purchase environmentally preferable products or services whenever possible by taking into consideration appropriate environmental attributes or benefits along with price and performance standards. The following criteria are used in evaluating whether a given product is environmentally preferable:

1. Recycled Content
2. Recyclable
3. Reusable
4. Repairable
5. Resource Efficient (water and/or energy conserving)
6. Alternative Energy Source
7. Bio-based
8. Biodegradable
9. Compostable
10. Low Toxicity
11. Pollution Reduction
12. Low Volatile Organic Compounds (VOC)

Bidders able to supply products meeting these criteria and meeting performance requirements are encouraged to offer them in bids and proposals.

In addition, the following criteria shall be considered for packaging:

- Minimizes or eliminates the use of polystyrene or other difficult to recycle materials
- Maximizes the use of recycled materials
- Minimizes or eliminates the use of disposable containers such as cardboard boxes
- Provides for a return program where packaging and shipping containers can be returned for recycling or reuse

AR 35.80 requires annual tracking and reporting of the City's environmentally preferable purchases. Therefore, contractor shall report the total dollar and unit volume of environmentally preferable products and/or services supplied to the City during each Fiscal Year (July 1 – June 30). This information shall be submitted to the City's Environmental Purchasing Program Coordinator by August 1st.

