

Court Puts Bag Ban on Hold in Oakland, Calif.

OAKLAND, CALIF. (April 25, 4:10 p.m. EDT) -- Communities in California will have a far more difficult time banning plastic bags — and possibly expanded polystyrene takeout food packaging — because of a court decision that threw out a bag ban in Oakland.

Alameda County Superior Judge Frank Roesch said there was “sufficient evidence” that Oakland’s ban could have a significant environmental effect. He also found “substantial evidence” to support an argument that single-use paper bags are more environmentally damaging than plastic bags.

Because of that, “the city must conduct further environmental review even if other conclusions” than the ones originally found “might also be reached,” Roesch wrote in his April 17 ruling.

Oakland city officials overlooked the unintended consequences of a bag ban, said Keith Christman, senior director of the plastics division of the American Chemistry Council in Arlington, Va.

“The court essentially said that the city didn’t go far enough to examine all the potential consequences,” said Michael Mills, the Sacramento, Calif., lawyer who filed the lawsuit in August on behalf of the Coalition to Support Plastic Bag Recycling.

“The decision has implications for any type of product a local community wants to ban,” he said. “If the purported reason of a ban is to protect the environment, the court said that you have to make sure that you are not substituting one problem for another problem.”

Mike Levy, director of the Plastics Foodservice Packaging Group of ACC, agreed.

“A ban on one product can have outright negative environmental consequences,” Levy said. “The reason this decision is so helpful to the plastics industry is that it helps to make sure that before bans are considered that could have environmental consequences, all those potential consequences are carefully reviewed and considered.”

Councilwoman Nancy Nadel, a co-author of the ban, told the San Francisco Chronicle that she hoped the council would order up a full environmental report so the ban can still be enacted.

“Of course I’m disappointed, but we’ll proceed ... and get it done,” Nadel said. “I think we can prove that it will be an improvement to the environment to ban plastic bags.”

Jim Lammers, vice president of environment affairs and general counsel for Dart Container Corp., which manufactures PS food packaging, said it was hard to say whether the decision will deter cities considering bans. It does, however, remind cities to determine the economic consequences of a ban.

Unless Oakland appeals, the ban — which went into effect Jan. 18, but was never enforced — cannot be put into place unless the city conducts an environmental impact review at an estimated cost of \$125,000 and the review’s conclusion supports a ban.

“If they want to pursue the ban, they need to do their homework and prepare a full environmental investigation and review,” Mills said.

San Francisco is the only U.S. city with a ban on plastic carryout bags. It went into effect Nov. 20 at grocery stores and pharmacies with more than \$1 million in sales.

“It is going to force the city [Oakland] to prove its point about the environmental benefits of banning plastic bags — which we don’t think they can do,” said Kevin Kelly, chief executive officer of produce bag manufacturer Emerald Packaging Inc. of Union City, Calif. Kelly was a party to the lawsuit.

The ruling may also effectively prevent many smaller California communities from imposing plastic bag bans because of the financial cost of conducting a full environmental review. Nearby Fairfax made its recent planned ban voluntary after the threat of a similar lawsuit, and Bakersfield pulled back from one because “they were concerned about being sued,” Mills said.

“Local jurisdictions are going to have to carefully examine their priorities. I would think that they would think long and hard about whether that is how they want to spend their money,” Mills said.

Kelly was part of the coalition, along with plastic bag manufacturers Superbag Operating Ltd., Advanced Polybag Inc., Grand Packaging Inc. and Hilex Poly Co. LLC; plastics produce bag manufacturers Emerald Packaging and Crown Poly Inc.; plastic bag distributor Elkay Plastics Co. Inc. and recycler Fresh Pak Corp.

Among other things, the coalition argued that paper bags take more energy to produce, create more greenhouse emissions and generate 50 times more water pollutants than the manufacturing of plastic bags.

The coalition challenged the ban on the grounds that Oakland did not comply with the California Environmental Quality Act, which requires public entities to document and consider the environmental impact of their decisions. The city said it was exempt from CEQA because its ban would have “positive environmental effects and no possibility of significant adverse effects.”

The court disagreed. “The city cannot meet the [CEQA exemption] standard that there is no possibility that the ordinance will cause a significant environmental effect,” Roesch wrote. “Substantial evidence in the record supports at least a fair argument that single-use paper bags are more environmentally damaging than single-use plastic bags.”

Kelly said the decision is important even if Oakland decides to go forward with its ban — which he suspects the city might do.

“It gives us more time to make the case for plastic bags and explain how some of the myths came to be,” Kelly said. “It gives you the time to make the arguments you need to make to help the industry survive.”

Kelly added it gives the industry time to look at ways to increase plastic bag recycling.

ACC, through its Progressive Bag Affiliates group, is taking steps in the direction, introducing a new plastic bag recycling logo, signs and a toolkit for grocery stores aimed at providing a more uniform, consistent message to consumers.

PBA members API Corp., Intoplast, Hilex Poly and Superbag — which together represent more than 90 percent of domestic plastic bag production — have agreed to use the new logo and message.

“We are hoping that it will be a more consistent image and identify and make it easier for consumers to recycle,” Christman said.

In addition, ACC has developed window posters that point out that the amount of film and bags recycled in 2006 was enough to manufacture nearly 1.5 million composite lumber decks.

“We have to get the word out about in-store recycling,” Kelly said. “We have to look at the benefits of curbside recycling. We have to get the message out about the carbon footprint of plastic bags vs. other alternatives. We have to push on to the next step — looking at ways to increase post-consumer recycling.”

Source: Plastics News, April 25, 2008