

PROJECT GREEN

Battle of the Bags

How the plastics industry uses lobbying and legal threats to turn plastic bag prohibitions into voluntary recycling drives.

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When San Francisco became the first U.S. city to prohibit large grocery stores and pharmacies from distributing disposable plastic bags in March 2007, it appeared to have sparked a trend. At least a dozen other cities, counties and states were soon considering proposals to ban or severely restrict distribution of what many environmentalists consider a wasteful and harmful product.

The plastics industry had no intention of allowing the San Francisco model to spread without a fight, though. It quickly and quietly joined with retailers and other business interests and launched a successful counterattack, using lobbying muscle to quash proposed bans. In the face of the onslaught, the cities have instituted voluntary recycling programs that proponents of the bans say are ineffective and likely to remain so.

And in at least two instances, plastics interests have turned the tables on their green adversaries by filing lawsuits on environmental grounds in an effort to prevent bans from taking effect.

"The plastic industry ... will try to win local battle by local battle," says Marc Mihaly, director of the environmental law center at Vermont Law School. "They will intimidate where they can. If they can't intimidate ... they will try to influence legislators."

Plastics industry representatives attribute their successes to a growing realization that plastic bans are misguided.

"The trend is that cities who are taking a look at what San Francisco did ... are all taking a step back and going toward recycling," said Donna Dempsey, a spokeswoman for Progressive Bag Affiliates, which represents plastic bag makers.

The so-far scattered skirmishes are part of a grander battle over bags, a conflict in which plastic and paper industries are fighting for supermarket supremacy while fending off an ecological newcomer: the reusable fabric bag.

Plastic bags winning in marketplace



The image is a screenshot of the Orbitz website's 'Top Flight Deals' section. At the top, it says 'Top Flight Deals' in large blue letters, with a yellow starburst graphic to the right that says 'Updated Daily!'. Below this, it says 'UPDATED: 7:06 PM CDT, SEP. 27'. There are three main deal cards visible: 'United: Find deals on flights to top destinations »', 'US Airways: Find flight deals to top destinations »', and 'Cheap Airfare and Flight Deals for Airlines Tickets »'. At the bottom of the screenshot is the Orbitz logo with the tagline 'A STEP AHEAD'.

Plastic bags have established the clear upper hand. Nationwide, grocery stores and pharmacies go through about 92 billion plastic bags a year, compared with about 5 billion paper sacks, according to paper and plastic industry estimates.

That success also has made the light, strong polyethylene sacks a prominent target for critics. Their manufacture requires large quantities of petroleum. And, once discarded, they tend to take flight in a puff of wind, snagging in trees and fences or floating in bodies of water, where they can choke marine life and birds. As litter, a plastic bag's life expectancy is far greater than a human's — 1,000 years or more.

In Philadelphia, one of the cities that drafted legislation to ban plastic bag distribution by large retailers, they also have a habit of choking the city's antiquated sewer system.

"It was a common-sense issue," said Brian Abernathy, a legislative aide to the proposal's sponsor, City Councilman Frank DiCicco.

But while the ban had popular support, Abernathy said, proponents were ill-prepared for the industry opposition they encountered at the first public hearing on the plan in October. Among those who spoke out against the proposal were the Philadelphia-based petroleum and chemical company Sunoco; the state's food merchants association; bag wholesalers and distributors; the American Chemistry Council, which represents plastic and chemical companies; and the Progressive Bag Alliance, as the plastic bag makers trade group was formerly known.

In short order, the proposed ban was withdrawn and, after meetings with representatives of the opposition, the sponsors agreed to implement a voluntary program to recycle plastic bags instead.

Other cities and counties that considered bans on disposable bags but instead approved bag recycling programs include New York City; Austin, Texas; Phoenix; Annapolis, Md.; and Los Angeles County.

Legal test unfolds in California

Environmentalists and business interests are closely watching a key legal test unfolding in Alameda County, Calif., where the plastics industry and related businesses are using the California Environmental Quality Act to challenge a ban on nonbiodegradable plastic bags approved by Oakland in July 2007.

The plaintiff in the lawsuit is the Coalition to Support Plastic Bag Recycling, a group that includes seven plastic bag manufacturers, a plastic recycler in Texas and Kevin Kelly, "a taxpayer, residing in the city of Oakland," who also is the president of the California Bag and Film Federation.

The coalition argues that the measure violated a provision of the state law requiring that a study of the possible adverse environmental consequences of the policy be conducted before enactment. Alameda County Superior Court Judge Frank Roesch agreed in a preliminary ruling, halting implementation of the ban, which would have taken effect Jan. 17, until the lawsuit is heard.

The complaint states that the ban will force consumers to use more paper bags, "which are more costly, generate more pollutants during manufacturing and require more energy to produce and recycle than plastic bags." It also alleges that the continued use of biodegradable plastic bags, allowed under the ban, would

"contaminate" recycling programs for disposable plastic bags.

Backers of the ban say the plastics industry is misusing a law intended to protect the environment by seeking to equate a policy decision with a construction project.

"They are corrupting the environmental impact review," said Marissa Arrona, policy aide to Oakland City Councilwoman Nancy Nadel, who co-sponsored the ordinance. "If every effort a city wants to make requires an impact study ... they wouldn't be able to do anything."

'That's a lot out of the budget'

While Oakland decided to fight the lawsuit, an identical legal challenge by the same group forced another California town to back off plans to ban disposable plastic bags. The City Council in Fairfax, population 7,000, proposed a plastic bag ban in July that would have extended to all retailers, but dropped it when faced with the prospect of an expensive environmental impact report.

"They were calling for a full-blown environmental impact report, which can cost \$100,000," said City Councilman Lew Tremaine. "That is a lot out of the budget of a little town."

The council instead passed an ordinance making the ban voluntary.

But Fairfax residents have begun collecting signatures aimed at putting the ban on the ballot as a local initiative in November. If passed, it would be exempt from the environmental assessment process.

In its drive to defeat bans on disposable bags, the plastics industry and its retail allies have become the loudest voices in favor of bag recycling.

"The trend is clear that recycling is the best solution," said Keith Christman, senior director of packaging at Progressive Bag Affiliates, an arm of the American Chemistry Council. "It can be made into other stuff, as long as it becomes recognized and (people) see that it can be a valuable commodity."

But critics say that plastic bag recycling has never proven effective on a large scale. Between 1 and 5 percent of plastic shopping bags distributed by retailers are typically recovered through such programs, according to Darby Hoover, a recycling expert with the Natural Resources Defense Council.

Bags foul recycling machinery

One reason for the low rate is that municipal curbside recycling programs that collect glass, paper, plastic and aluminum products can't easily deal with loose plastic bags, which tend to get caught in and jam sorting equipment at recycling facilities. Some curbside programs will take plastic bags if they are bundled, but even then the commodity is low-grade and brings a low price because it gets dirty during handling and transportation.

These problems force the plastic industry to champion an approach that relies on consumers to return clean plastic bags to recycling containers at stores. While such collection points have been in existence for years in some areas, in-store recycling has never caught on.

The market for recycled plastic bags also is tiny. At the moment, a single manufacturer, the Trex Co. of

Winchester, Va., purchases 70 percent of the plastic bags recovered nationwide, mixing the plastic with wood scraps to make outdoor decking. But the company lost \$75 million last year, raising questions about the long-term viability of the end market.

Despite such problems, some cities are still optimistic that plastic bag recycling can work with enough support.

Among the most aggressive is Phoenix, where discussions by the City Council of a ban on disposable plastic bags instead led to a citywide bag recovery program called "Bag Central Station." The program allows any plastic bag — regardless of where it was distributed — to be returned at any of the prominently marked receptacles placed with retail outlets. The city has coupled the recycling push with education efforts and a large giveaway of reusable bags.

Al Shiya, a spokesman for the Phoenix Public Works Department, said the program was the result of a "very concerted effort on the part of Arizona grocers to respond in a positive way to a threat on the part of some City Council people to ban plastic bags."

The program, which took effect in November, will be assessed in June.

Recycling tests can lead to bans

If the recycling numbers don't stack up, however, Phoenix and others could end up taking a look at restrictions.

That is how San Francisco ended up with its ban on disposable plastic bags. The ordinance, which went into effect Nov. 1, mandates that large grocery stores and pharmacies (over \$1 million in annual revenue) can distribute only paper bags with 40 percent recycled content, compostable plastic bags and reusable bags.

The city first considered charging a fee for plastic bags — an idea it borrowed from Ireland, where a per-bag fee imposed in 2002 caused plastic bag usage to decline more than 90 percent. This idea met strong opposition from grocers, however, leading city officials to institute a trial recycling program for plastic bags.

While the trial was under way, the state of California — with support from the plastics industry — passed a bill requiring large retail stores to accept plastic bags for recycling. The bill also was amended to bar local governments from imposing fees on plastic bags.

When San Francisco's trial program came to an end, it was deemed a failure by the city because grocers didn't provide verifiable figures on the number of bags that were recycled, citing trade secrets, said Mark Westlund, a spokesman for the city's Department of the Environment.

Dave Heylen, a spokesman for the California Grocers Association, which represents about 500 grocers, confirmed "there was a disagreement on the numbers." He said consumers returned 7.6 million plastic bags to participating stores during the trial, surpassing the goal by 1.5 million, but "San Francisco felt the numbers weren't collected correctly."

With no option remaining to place a fee on the bags, Westlund said San Francisco saw few choices.

'One alternative ... ban them outright'

"We only had one alternative, and that was to ban them outright," he said.

While the aggressive stance of the plastics industry has dampened interest in plastic bag bans, it has not completely halted such measures. In Santa Monica, Calif., the City Council is drafting a ban that some environmentalists say will go well beyond San Francisco's and avert a legal challenge such as the one faced by Oakland.

"This is too big of a problem to recycle our way out of," said Sarah Abramson, coast resources director at nonprofit environmental group Heal the Bay in Santa Monica.

And in Annapolis, Md., proponents of a proposed ban that turned into a recycling program say that they at least managed to set aggressive targets that — if not met — could trigger tougher action.

"We have legislation to require major retail chains to aggressively market reusable bags to reduce use of plastic bags by 40 percent," said City Councilman Sam Shropshire. "If they can't do it we will put the ban back on the table."

In the meantime, at least one retailer is getting out of the plastic bag arena altogether.

Whole Foods Market recently announced that it will eliminate the use of plastic bags in all of its U.S. stores by Earth Day, April 22. The chain will then provide customers only with paper bags made of 100 percent recycled material and reusable bags.

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