

HEALTHY CHILDREN ORGANIZING PROJECT

Formerly the Lead Poisoning Prevention Project

Consumer Action
221 Main St., 480
San Francisco, CA 94105
(415) 777-9648
Fax (415) 777-5267

SFE–Policy Committee Precautionary Principle Item 10.30.6

Recent Precautionary Actions–influenced by SF’s Environmental Code Precautionary Principle:

1. San Francisco Unified School District [see attached discussion]:
 - Environmentally Preferable Janitorial Purchases [see SF ordinance]
 - High Performance Renovation Design Standards [see LEEDs]
 - Integrated Pest Management Plan [see SF ordinance]
 - Plans to: prevent exposure to lead hazards, improve IAQ in schools]
2. Ordinance Prohibiting Sales of Toys/Child Care Articles Containing BPA/Phthalates [see recent news article re chemical industry/business pre-emption effort]
3. ATF Environmental Committee: Healthy Private Homes Initiative–guidelines to follow.
4. Initiative helping low-income caregivers learn how to clean homes the non-toxic way.

HEALTHY CHILDREN ORGANIZING PROJECT

Formerly the Lead Poisoning Prevention Project

Consumer Action
221 Main St., 480
San Francisco, CA 94105
(415) 777-9648
Fax (415) 777-5267

CITY SUED OVER BAN ON CHILDREN'S PRODUCTS USING SUSPECT CHEMICALS **Plaintiffs say state law pre-empts the local ordinance**

San Francisco Chronicle, October 26, 2006, By Jane Kay, Chronicle Environment Writer

[Rachel's introduction: In June, the City of San Francisco voted to ban certain toxic chemicals from children's toys. Now a group of corporations is claiming San Francisco has no right to protect its residents in this way.]

A group of chemical manufacturers, toymakers, retailers and the owner of the children's store Citikids filed a lawsuit Wednesday challenging San Francisco's ban on the sale of toddler toys and child-care products that contain certain chemicals suspected of being toxic substances. The suit argues that state law, including the California Hazardous Substances Act, pre-empts the San Francisco ordinance.

Today, the plaintiffs are expected to ask San Francisco Superior Court Judge Peter Busch for a hearing, during which they will seek a preliminary injunction to delay the Dec. 1 effective date of the ordinance until the matter is resolved in court.

City officials already had promised business groups that they would hold off enforcement until after the holidays.

The San Francisco Board of Supervisors unanimously adopted the ordinance in June. It prohibits the sale, distribution or manufacture of toys and child care products intended for use by children under the age of 3 if they contain phthalates, which are used to soften polyvinyl chloride (or PVC) and bisphenol A, which is common in hard, clear plastic. The ordinance does not include penalties for violations.

The law is based on the city's "precautionary principle." The supervisors said they wanted to err on the side of caution and protect the youngest children.

A similar ban on phthalates in children's toys and child care products went into effect in the European Union in July. For years, members had reviewed a growing number of studies showing that some phthalates caused cancer and reproductive damage in laboratory animals, raising questions about what the chemical could do to humans.

San Francisco, however, is the only city in the world to ban bisphenol A in toys and child care products for youngsters. Bisphenol A is used to make polycarbonate plastic, the substance used to make hard clear plastic baby bottles.

Lab studies have shown that bisphenol A can leach out of baby bottles. In animal experiments, at low doses, it has caused cancer in rats. The U.S. Food and Drug Administration and scientific bodies in Europe and Japan have said that low levels of bisphenol A pose no health risk to humans, the lawsuit said.

In addition to arguing that state law pre-empts the city's effort, the suing parties contend that the supervisors failed to comply with Proposition I, a voter-approved measure that requires an economic review of legislation that might have a material impact on the city before it goes to a vote.

"No report was prepared, and the city's determination that no report was required -- when the ordinance will so egregiously impact toy retailers, grocers and consumers -- was an abuse of discretion," the suit said.

In a press release, Richard Woo, owner of Citikids Baby News on Clement Street, said, "The volume of our sales will drop and so will the number of our employees, since we won't be able to keep them."

Other plaintiffs are American Chemistry Council, California Retailers Association, California Grocers Association and Juvenile Products Manufacturers Association.

A spokesman for City Attorney Dennis Herrera's office declined to comment on the suit.

"We haven't been served with a complaint. It would be premature for us to comment on it," said spokesman Matt Dorsey.

E-mail Jane Kay at jkay@sfchronicle.com.

HEALTHY CHILDREN ORGANIZING PROJECT

Formerly the Lead Poisoning Prevention Project

Consumer Action

221 Main St., 480
San Francisco, CA 94105
(415) 777-9648
Fax (415) 777-5267
www.HealthyChildrensf.org

San Francisco Unified School District and the Precautionary Principle

The Problem: SFUSD, with over 57,000 K-12 lower-to-middle income children/students, and another 1,400 pre-K low-income children, most of which are not white, use over 120 schools many of which are more than 60 years old. The buildings are in various stages of deterioration. The District is blessed with an under staffed, under qualified, not so well managed building facilities operation that cannot keep up with the maintenance and repair needed to keep these buildings toxin-safe for pre-K children [the most vulnerable], K-12 children/students and staff [teachers, administrators, building repair staff and more, which are exposed in different ways depending on their jobs, and which can pass a variety of toxins on to their children and children to be in various ways]. The funding to improve this staff is not available unless you want to fire teachers. The District staff is not committed to “toxin-safe, environmentally healthy buildings”, and few if any on the Board of Education understand what that means and what it takes. BOE of education resolutions have had little effect on the District’s resolve to implement them. We have resolutions regarding the establishment of policies, some dating back to 1992 and 1998, for: lead hazard reduction, IPM, IAQ, Tools for Schools, and High Performance School Design Guidelines.

The Issue: what to do given our limited resources, limited District cooperation and capacity to respond, and more? What is the biggest bang for our buck that will truly protect the school community from exposures to toxic chemicals in their environment and encourage that community to make this effort part of their sustainable agenda for what they want to see in their schools?

Some Precautionary Action Solutions for Consideration

Introduction: Several years ago I was asked about a precautionary principle resolution for the District, and subsequently the Green School Initiative sought to have the Board enact one [the GSI resolution didn’t get past a Board committee]. I demurred because we already had a number of specific resolutions on the same issues that would be contained in a PP resolution, the Board members supporting the resolutions weren’t following up and helping implement those resolutions, and the belief that out time would be best spent on getting the District staff to implement the work that needed to be done. Examples of our efforts to implement precautionary action in the District follow:

Environmentally Preferable Janitorial Products: require the use of EPPs in the District. Use SFE’s experience as basis for the District doing the same thing as the City, with one important additional criteria: avoid the purchase of asthma allergens or irritants [not included in the City’s criteria].

Status: provided District with SF and New Dream info about EPPs and purchase and use throughout the country. Facilitated meeting between SFE and District. Funding has been obtained to employ consultant also advising SFE to help District make purchases. Hoping to include District staff in trainings provided for SF staff. Working on making purchases available at a discount to the District through CA’s contract purchasing alliance with 8 other states. In final stage of negotiations with SFE regarding consultant’s work on SFUSD issues.

Tools for Schools: low cost/no cost way to clean up school rooms, engage teachers, parents and students in the effort, as well as custodians. BOE resolution in place.

Status: funding obtained for coordinator of program, hiring in process, funding obtained for stipends paid to designated teachers at each school, first 35 schools to be designated by Jan. 1 07, process for training teachers to begin shortly after coordinator hired.

High Performance Renovation School Design Guidelines: similar to LEEDs guidelines for government/commercial buildings, with an emphasis on new construction/energy savings, recycling and the like, with some good direction concerning less toxic content in building/construction materials and a developing focus on proper maintenance and repair of these buildings [assuming there is a staff to do it]. BOE resolution in place.

Status: HCOP succeeded in getting help from the SFE and other outside agencies, and the District agreed to revise these guidelines to recognize that most of the work involves renovations and to begin to emphasize the use of less toxic, non-toxic materials and substances in every aspect of its work. These guidelines are now standards, not just guidelines, that architects and contractors must follow in their work for the District. SFUSD is engaged in a number of renovations, but few at this point are focused on improving the environment in the schools—mostly providing ADA compliance pursuant to a court supervised settlement agreement. The current challenge is to get the staff in charge of those renovations to recognize that the standards need to be followed in every renovation, no matter what the size of the project, and to make the process "transparent" so that we all know that the standards are being followed.

Williams Settlement—Repair, Maintenance and Planning: the statewide settlement set forth in state legislation [not a court document] requires each District to make repairs broadly defined as emergencies in designated low performing schools—SFUSD has 43 low performers out of 120 or so. In fact, the State has defined emergencies broadly, tree roots in tennis courts/faulty HVAC ventilation systems, and this process can be used to make a number of much needed IAQ/IEQ repairs that will prevent illnesses caused by environmental toxins—precautionary action. The State is setting aside up to \$800,000,000 to pay for these fixes—separate and apart from the normal sources of school funding. In addition, a system is being set up to continually evaluate the condition of these schools and to access what is needed to bring all schools in these districts up to acceptable standards within 5 years. [My guess based on estimates made by the District is that it would take \$1.5 billion or so to do it for the SFUSD and it would still not have the capacity to properly maintain and repair these buildings.] Nevertheless, this is an important goal with respect to future precautionary action.

Status: the District is way behind many other Districts in making requests for funding these repairs and up to now has demonstrated a lack of capacity to take advantage of the opportunities offered by the WS. We are working with plaintiffs' counsel in the case [ACLU, Public Advocates] and others to encourage the District to increase its efforts, to train the teachers' union staff and teachers and parents about taking advantage of the opportunities available under the WS, and we are working with a state collaborative to make the state legislation implementation user friendly for SF.

Integrative Pesticide Management Program: District has one in response to BOE resolution in 1998 sponsored by CA for Pesticide Reform, but teachers and others report that vermin continue to reside in the schools. The staff person in charge is trying to prevent use of more objectionable pesticides, but even if successful in doing so, the animals are there and carry potential upper respiratory [asthma] irritants and sensitizers for children and staff. There are a number of barriers to a successful plan in the District: poor landscaping practices, easy access through less well maintained buildings, poor custodial practices, poor classroom behaviors [left over food, etc.]

Status: no community efforts yet; union's contract requires pest-free classrooms.

Other PP Actions as part of comprehensive approach to toxin-safe, environmentally health District schools initiative:

Asthma-safe gardens and landscaping: plants can trigger asthma attacks and cause other health problems, especially if combined with exposures to unnecessary pesticides. We are working with District and Alliance for Green Schoolyards. Just started.

Less toxic school buses: District purchased large number of new buses recently [55]. It still needs to retrofit smaller buses [140]. They are all diesels of one kind or another. These changes would not have been made but for the advocacy of community groups and the cooperation of State agencies.

Storage, Use and Disposal of Hazardous Materials and Wastes: like private businesses, the District is engaged in the use of hazardous materials for a number of purposes, e.g. cleaning, maintenance, science learning labs, and more. The state and SF's Department of Public Health regulate these activities. The District has a number of responsibilities regarding the protection of students and staff from exposures to toxic chemicals regarding use, storage and disposal. We're in the early stages of learning how well the District is doing, with some information already that it could do better.

Environmentally Healthy Schools—SFUSD Plan for Success 2006

