

San Francisco Department of the Environment Regulation #SFE-05-01-PPO:

Regulation Adopting an Approved Alternatives List for

- (1) Products Covered In The Federal Comprehensive Procurement Guidelines Other Than Printing And Writing Paper Products;
- (2) Products Not Listed in the Federal Comprehensive Procurement Guidelines;
- (3) Batteries; and
- (4) Vehicle Fuel

Precautionary Purchasing Ordinance (Ord. No. 115-05)

Effective July 18, 2005

A. Authorization.

The Board of Supervisors and Mayor enacted the Precautionary Purchasing Ordinance , effective July 18, 2005 (the "Ordinance"). The Ordinance is codified as Chapter 2 of the Environment Code. The Ordinance creates a comprehensive new system for the City to identify and use environmentally preferable products based on goals and criteria established by the Ordinance. In order to consolidate various existing requirements for environmentally preferable purchasing into the new City-wide program, the Ordinance repeals existing requirements relating to purchases of: (1) Products Covered in the Federal Comprehensive Procurement Guidelines (CPG) Other Than Printing And Writing Paper Products; (2) Products Not Listed in the CPG; (3) Batteries; and (4) Vehicle fuel and requires the Director of the Department of the Environment to immediately adopt the same requirements as regulations effective on the effective date of the Ordinance. (See section 3 of the Ordinance). Future changes to these requirements, including changes to make them more consistent with the new program, can be made after a public hearing pursuant to Environment Code section 203(d).

B. Findings.

The adoption of these regulations is in compliance with the directives of the Ordinance.

C. Scope and Requirements.

The attached regulations set forth the scope and requirements pertaining to each product category listed above, and are subject to the requirements of the Ordinance, including the definitions, requirements pertaining to waivers, and enforcement mechanisms set forth in the Ordinance. The regulations do not duplicate the Ordinance, and must be read together with the Ordinance. Unless otherwise defined below, words used in this regulation shall have the same meanings as those words in Chapter 21 of the Administrative Code and Chapter 2 of the Environment Code.

For the product categories outlined above, *City departments may purchase only those products approved in the attached regulations.*

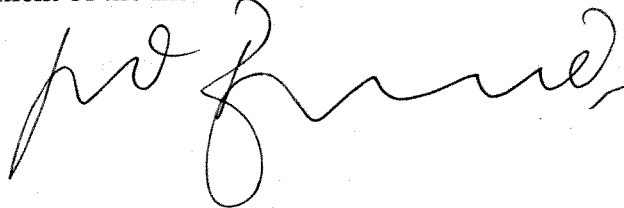
D. Enforcement.

These regulations have the full force and effect of law. A violation of these regulations is enforceable pursuant to Environment Code section 208.

The Director of the Department of the Environment hereby adopts these regulations, effective as of July 18, 2005.

Jared Blumenfeld
Director Department of the Environment

Approved:



Date:

July 14, 05

I. WAIVERS

A. WAIVER FORM AND WAIVER PROCESS

1. If a department considers it essential to purchase products that do not comply with the regulations, a waiver must be obtained from the Office of Contract Administration (see Environment Code Section 206). Departments are advised to first consult the Department of the Environment to find alternative, complying products that do not require a waiver. Contact the City Toxics Reduction Program at 415-355-3700, or email inquiries to environment@sfgov.org, "ATTN: City Toxics".

Waiver requests must be submitted on a form to be designated by the City Purchaser, and the City Purchaser must respond to waiver requests within 5 business days. Electronic submission is preferred. In general, waivers may be granted when the submitting department determines that no product on the Approved Alternatives List meets its performance standards, when the product's cost is prohibitive, or for other reasons deemed acceptable by the Purchaser (see Environment Code §206 for acceptable waiver criteria). A Department may grant itself a waiver only for emergency conditions that meet the criteria set forth in section 21.15(a) of the Administrative Code, and must follow up with written justification.

II. COMMON PRODUCTS

A. PRODUCTS COVERED IN THE FEDERAL CPG OTHER THAN PRINTING AND WRITING PAPER PRODUCTS (Formerly Environment Code §507)

1. "Comprehensive Procurement Guideline" or "CPG" means final guidelines, as periodically promulgated by the United States Environmental Protection Agency (U.S. EPA) and codified at 40 Code of Federal Regulations Part 247 as amended, which designate products that are or can be made with recovered materials as they apply to the procurement of items with recovered materials content.

2. As of June 15, 2005, final CPGs exist for:

Construction Products including: building insulation products, carpet (polyester), carpet cushion, cement and concrete containing: coal fly ash, ground granulated blast furnace slag, cenospheres or silica fume; consolidated and reprocessed latex paint, floor tiles, flowable fill, laminated paperboard, modular threshold ramps, nonpressure pipe, patio blocks, railroad grade crossing surfaces, roofing materials, shower and restroom dividers/partitions, and structural fiberboard.

Landscaping Products including: compost made from yard trimmings or food waste, garden and soaker hoses, hydraulic mulch, lawn and garden edging, plastic lumber landscaping timbers and posts, and fertilizers made from recovered organic materials.

Nonpaper Office Products including: binders, clipboards, file folders, clip portfolios and presentation folders; office furniture, office recycling containers,

office waste receptacles, plastic desktop accessories, plastic envelopes, plastic trash bags, printer ribbons, and toner cartridges.

Paper and Paper Products including: commercial/industrial sanitary tissue products, miscellaneous papers, newsprint, paperboard and packaging products, printing and writing papers.

Park and Recreation Products including: park benches and picnic tables, plastic fencing, playground equipment, playground surfaces, and running tracks.

Transportation Products including: channelizers, delineators, flexible delineators, parking stops, traffic barricades, and traffic cones.

Vehicular Products including: Engine coolants, rebuilt vehicular parts, re-refined lubricating oils, and retread tires.

Miscellaneous Products including: awards and plaques, bike racks, blasting grit, industrial drums, manual-grade strapping, mats, pallets, signage, and sorbents.

3. Any City department buying or contracting to buy products on the CPG list (section B.2. above), including departments having responsibility for drafting or reviewing construction specifications, must buy products that meet or exceed the recommendations published in the corresponding "Recovered Materials Advisory Notice" or "RMAN."

"RMANs" are information and recommendations periodically published and amended by the U.S. EPA, based on U.S. EPA's market research concerning the availability, quality, and price of products listed in the CPG. *The RMANs make up the Approved Alternatives List for the above products.* For the most up-to-date RMANs, see the appropriate product category at:

<http://www.epa.gov/epaoswer/non-hw/procure/products.htm>.

This section does not apply to printing and writing paper products which are covered under Section 506 of the Environment Code. This section does not apply to City departments purchasing tires for use on passenger vehicles, police, fire, ambulance or other emergency vehicle used in the course of protecting the health and safety of the residents of the City.

4. The Director shall maintain and make copies of the current CPG and RMAN and supporting documents available.

5. Wherever possible, each City department that purchases or contracts to purchase paper products subject to this regulation shall purchase and contract to purchase paper products that are processed chlorine free. City departments are not required to procure paper products that are processed chlorine free under this Subsection in any of the following circumstances: (i) the product is not available in a reasonable period of time; (ii) the product would fail to meet reasonable performance standards; or (iii) the product is only available at an unreasonable price.

**B. PRODUCTS NOT LISTED IN THE CPG
(Formerly Environment Code §508)**

1. Wherever possible, for products which are not included in the CPGs, the City shall procure for its use products containing the maximum amount of post-consumer material.

C. BATTERIES (Formerly Environment Code §512)

1. Definitions

- (a) "Battery" means two or more connected cells that produce a direct current by converting chemical energy to electrical energy. For purposes of this regulation, "battery" does not include automotive batteries.
- (b) "Battery charger" means a device that restores anew the active materials in a battery.
- (c) "Battery pack" means multiple batteries joined together in a single housing.

2. A City department that purchases or contracts to purchase batteries or products that include or incorporate battery or battery packs, shall purchase and contract to purchase:

- (a) only the following types of batteries and battery packs which are deemed to be on the Approved Alternatives List for batteries and battery packs
 - (i) Rechargeable alkaline batteries
 - (ii) Rechargeable nickel metal hydride (NiMH) batteries, or
 - (iii) Another rechargeable battery type identified by the Director pursuant to regulations adopted under Section 203(d) of the Environment Code.
- (b) only from vendors that collect spent batteries and recycle them in accordance with applicable laws:

3. At the request of the City department, a vendor must submit written certification and documentation that collected spent batteries were recycled in accordance with applicable laws.

4. A City department that purchases or contracts to purchase battery chargers shall purchase and contract to purchase chargers that recharge Ni-MH batteries as well as other battery types.

5. Each department that purchases batteries must require in the contract that the products be accompanied by detailed recycling instructions and any batteries containing cadmium, mercury, lead, or other hazardous materials include a written explanation of the toxic hazards of these substances in the waste stream.

6. A City department that purchases or contracts to purchase products that include or incorporate battery packs shall purchase and contract to purchase such products in which the batteries are easily removable.

**III. PURCHASE OF MTBE-CONTAINING MOTOR VEHICLE FUEL
(Formerly Environment Code Chapter 9)**

A. FINDINGS.

In Ordinance No. 214-01, the Board of Supervisors made the following findings:

1. In response to a report on the "Health and Environmental Assessment of Methyl Tertiary-Butyl Ether (MTBE)" prepared by the University of California, Governor Davis issued Executive Order D-5-99 requiring the California Energy Commission, in consultation with the California Air Resources Board, to develop a timetable by July 1, 1999, for the removal of methyl tertiary-butyl ether (MTBE) from gasoline sold in the State of California at the earliest possible date but not later than December 31, 2002.
2. Under [Chapter 9 of the Environment Code], the City and County of San Francisco wishes to exercise its power to make economic decisions involving its own funds as a participant in the marketplace and to conduct its own business as a municipal corporation to ensure that purchases and expenditures of public monies are made so as to encourage the marketing of non-MTBE gasoline.
3. [Chapter 9 of the Environment Code] applies the Precautionary Principle to the selection of fuels used in the City fleet to minimize negative impacts on groundwater and human health.

B. DEFINITIONS.

Unless otherwise defined below, words in this regulation shall have the same meanings as those words in Chapter 21 of the Administrative Code and Chapter 2 of the Environment Code.

"Motor Vehicle" shall mean a vehicle that is self-propelled.

"Motor Vehicle Fuel" shall mean any substance which can be used as an energy source to power Motor Vehicles. Motor Vehicle Fuel shall include but is not limited to gasoline and diesel fuel.

"MTBE" shall mean the chemical commonly known as methyl tertiary-butyl ether.

C. PROHIBITING PURCHASE OF MTBE-CONTAINING MOTOR VEHICLE FUEL.

After January 1, 2002, non-MTBE Motor Vehicle Fuel is deemed to be the Approved Alternative to Motor Vehicle Fuel and the following requirements shall apply:

1. The City shall not enter into any new Commodities Contracts allowing for the purchase of Motor Vehicle Fuel that contains MTBE.
2. The City shall not modify any existing Commodities Contract for the purchase of Motor Vehicle Fuel containing MTBE to extend its term.

3. All Commodities Contracts entered into by the City for the purchase of Motor Vehicle Fuel shall require the purchased Motor Vehicle Fuel to be free of MTBE.

D. CONTRACT REQUIREMENTS.

1. Every Commodities Contract for Motor Vehicle Fuel entered into by City shall provide the following:

- (a) Contractor agrees that it is not and will not be supplying any Motor Vehicle Fuel to City that contains MTBE.
- (b) Failure to comply with the foregoing requirement shall constitute a material breach by Contractor of the terms of the Commodities Contract. Such failure shall be determined by the City in its sole discretion.
- (c) In the event that Contractor is found to be in breach of this provision, Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit under the Commodities Contract, or five percent of the total amount of the contract dollars, whichever is greater. Such liquidated damages shall be payable upon demand, and may be withheld from monies owed to Contractor under the Commodities Contract.
- (d) Nothing in these regulations shall be construed to limit any other remedies available at law to City.