

SOLID WASTE DISPOSAL AND THE FUTURE OF PLASTIC PACKAGING: GOLDEN AGE OR ICE AGE?

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It has now been 50 years since television became a real part of our daily lives. It has been 21 years since Dustin Hoffman heard the word "plastics" as The Graduate in that memorable film -- a career I had already been living daily for about 14 years at the time. Believe it or not, it has now been 16 years since the Vinyl Chloride crisis arose with the angiosarcoma of the liver revelations of Maury Johnson at Goodrich in the wake of animal toxicological work done by the Drs. Viola and Maltoni in Italy.

It was not long after the Occupational Safety and Health Administration (OSHA) and Environmental Protection Agency (EPA) hearings that led to the current Vinyl standards that I pledged to the SPI Vinyl Safety Group, the predecessor of this Institute, that we would bring the Food and Drug Administration (FDA) debacle to a successful conclusion before I retired or was carried out. Little did I dream that the road would be so long, so arduous, and so frustrating. Even now, all I can say to you is that vinyl food packaging has at least been declared safe and fully usable in an official FDA document on the subject. But we still have to pass the crucible of an Environmental Impact Statement. This will be done -- but it will not justify the time poorly spent on doing it. This is a shame. I must say that I am even more distressed and ashamed that a few of our own in the plastics industry are seizing the occasion of the crucible for back stabbing. I will continue to do everything I can to bring this self-destructive activity to a halt and I am sure many of you will too. I also hope to keep my pledge to bring the government's regulatory overkill where PVC is concerned to a final resting place.

Strangely enough, the environment for plastics, including PVC, at the end of the '80's is not all that different from that of the early '70's. When the vinyl chloride story began unfolding in 1973, it actually interrupted growing attention to the solid waste problem. This problem was beginning to command the attention and writings of self-

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proclaimed environmentalists like Barry Commoner and Sidney Wolfe. They remain on the scene but the organizations they head or support, and many other apparently dedicated saviours of the earth, are far more powerful and sophisticated now. Since they are preparing for Earth Day II in 1990, I thought it might be well for me to spend my time today telling you how this old warrior of so many plastic battles sees the scene. If I need a theme to do this, let it be that, as always, I think it is time to make our own game plan and stop playing "theirs."

Many environmental issues have contributed to the current stormy regulatory atmosphere, but none looms larger today than the problem of solid waste disposal. The solid waste disposal "crisis" has become the environmental issue of the day. Everyone from the smallest town council to the Food and Drug Administration feels obliged to take a stab at dealing with the solid waste issue. But few of our public officials are willing to stand up and advocate the reasoned, costly and comprehensive measures that are essential to achieving a practical, long term solution. Instead, we are either barraged with hasty measures banning selected packaging materials, almost always plastics, or held hostage by that brand of passive-aggressive regulation made famous, or rather infamous, by FDA. At the heart of either approach is the specious premise that plastics is the cause of the solid waste crisis. Yet we know that all plastic is only approximately 7.3% of the solid waste stream by weight.^{2/}

Solid waste policies and initiatives that make plastics the fall guy for the solid waste problem are wrongheaded and should be strenuously opposed. However, in the face of the genuine concern over solid waste and the seemingly undying public conviction that plastics are the major source of our trash troubles, opposition alone, however staunch or justified, is not enough. We must go further. Unless we want to be forever reacting to, and victimized by, the bad ideas of others, we need to come up with some good ideas of our own.

We need to seek new pragmatic approaches adapted to the chilly realities of the present regulatory climate. We need to answer proposals and policies that would ban or restrict plastics with a well reasoned alternative proposal -- an alternative that not only seeks to preserve the free market for plastics, but also endeavors to respond to the urgent public

^{2/} Figures on the percentage of plastics in the solid waste stream by volume are less certain, although volume percentage is undoubtedly greater than the weight percentage.

demand for action to alleviate solid waste disposal problems. In short, we need a vision of where we want to go with the solid waste issue. We need a grand strategy for a comprehensive system to deal with solid waste, a framework national in scope, but flexible enough to accommodate varied state and local waste disposal needs.

The development and implementation of such a national solid waste plan would obviate the need for the many ill-considered, piecemeal local, state and federal efforts to tackle various aspects of the issue. Such a plan might even persuade (or, if persuasion were not enough, require) FDA to forego a subtle crusade against new food packaging materials and concentrate its energies on its many pressing responsibilities with regard to the protection of the safety of this country's food and drugs.

We have it in our power to influence the direction of this present turbulent debate. If we succeed in developing realistic approaches to significantly reduce the contribution of plastics to our solid waste burden, we could usher in halcyon days for the plastics industry. If we fail, we could find ourselves trapped in a new Ice Age in which we are slowly legislated, regulated and ordinated into a frozen state of existence -- with new improved products barred from the marketplace.

STATE AND LOCAL SOLID WASTE MEASURES

The changes in the regulatory and legislative climate for plastics are most apparent at the state, county and city level. For several years now, many state and local efforts to grapple with the solid waste problem have keyed in on plastic food packaging. Far from abating, it appears that the onslaught of local antiplastics measures is still on the rise.

The latest and most egregious example of this trend is the recently enacted Minneapolis and St. Paul ordinances banning the sale of plastic packaging materials for food and beverages sold in city retail stores. Effective July 1, 1990, the Ordinances specifically prohibit the sale of any food or beverage "placed, wrapped or packaged, at any time at or before the time or point of sale, in or on packaging which is not environmentally acceptable."

The Minneapolis and St. Paul Ordinances are the most severe restrictions on plastic packaging to be passed at either the state or local level. Indeed, the law is far more onerous

even than Suffolk County's ban on the sale of food packaged at point of sale in "nonbiodegradable" packaging. For this very reason, a strong case may be made that the Minneapolis and St. Paul bans violate the "Commerce Clause" of the United States Constitution. These Ordinances, like Suffolk County's ban, also appear to violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

It is disturbing to note, however, that industry opposition, including the not unlikely prospect of litigation, apparently did nothing to deter the City Council or dim the enthusiasm of the citizens of Minneapolis-St. Paul for the ordinances. Despite a vigorous lobbying campaign highlighting the problematic nature of the law, the ordinances apparently enjoy great popular support. In fact, newspaper ads urging voters to call their councilman to voice their opposition to the ordinance only succeeded in triggering a deluge of calls in favor of the ban. Of course, the public has yet to experience the harsh reality of what the law will mean in day-to-day living, an anomaly with all the ordinances passed thus far.

The Minneapolis experience strongly suggests the need to explore new avenues in trying to deal with burdensome solid waste measures. An example of such an innovative approach is the ongoing effort of the Council for Solid Waste Solutions in Suffolk County. Several members of this Institute, Occidental, Dow and Goodrich, are members of the Council and Roy Gottesman has continuing impact through the close relationship he has with the Council's staff. It seems to me that all companies with an interest in the future of plastics should lend their support, too.

By way of background on the Suffolk County situation, SPI, funded by CSKS, together with the Flexible Packaging Association, the Polystyrene Packaging Council, and others, filed suit against Suffolk County last July challenging Local Law 10-1988. That law would ban, as of July, 1989, the use of certain "non-biodegradable" food packaging added at the point of sale in Suffolk County, including plastic grocery bags and polystyrene and polyvinyl chloride containers and utensils.^{1/} The SPI suit seeks an order declaring the legislation null and void for, among other reasons, the county Legislature's failure to prepare an Environmental Impact Statement prior to enactment.

^{1/} Exemptions in the bill result in no ban of current PVC products.

At the same time that SPI is fighting Suffolk County's plastic packaging ban in court, the Council for Solid Waste Solutions has been trying to work with County legislators on alternative, less burdensome legislation. While we await the judge's decision in our suit, the Suffolk legislature is considering an alternate bill that would create a Suffolk County Plastics Recycling Commission with the mission of developing a plastics recycling and source reduction plan. This legislation would place a moratorium on the Local Law 10-1988 ban until January 1, 1990. During the moratorium, the recycling commission, which would be composed of legislators as well as industry and town representatives, would study the feasibility of developing a recycling program for plastic packaging materials.

The alternate resolution may represent a reasonable compromise between the public's desire to reduce the solid waste burden at all costs and the interest of the industry to continue to offer a sufficient quantity and range of quality packaging materials. I believe we can build on this sort of approach and develop model legislation, both state and federal, to deal with the solid waste problem comprehensively through a coordinated program of recycling, waste to energy incineration and landfilling.

Such an approach will not be easy. For starters, the legislation would have to tackle many difficult issues, such as siting for landfills and incinerators, that have thwarted many previous waste disposal proposals. Funding is another obvious problem. But with creativity, these problems can be resolved. The value to the industry if we can take the lead on the solid waste issue -- and the consequences if we do not -- is too great for us not to try.

FDA AND SOLID WASTE

A comprehensive solid waste proposal might also provide some relief from certain misguided federal solid waste policies. If the situation with regard to plastic packaging and solid waste at the state and local level is tempestuous, conditions at the federal level, at least where FDA is concerned, might best be described as cloudy with poor visibility. FDA's misdirected activities with regard to the solid waste issue as it relates to the clearance of packaging materials bear out the truth of the adage about "too many cooks." In recent times, FDA has been so adept at spoiling the broth that anyone who approaches the agency seeking any sort of

clearance for a new packaging material departs with a bad taste in his mouth.

Simply put, for approximately the last year, FDA has displayed an extreme reluctance to clear any new food packaging material. This reluctance is not engendered by any concern over the safety of the packaging materials, but rather by questions about the post-consumer environmental impact of the package and in particular about its impact on the solid waste problem.

As you know all too well, in accordance with the National Environmental Policy Act of 1969 (NEPA), in reviewing a Food Additive Petition for new or expanded use of a food-contact material, FDA routinely assesses the environmental effects of the clearance being sought. In connection with the many resins it has cleared in the 20 years since NEPA became law, FDA has, almost without exception, summarily found that the clearance would have no significant environmental impact.

Now, however, in the guise of fulfilling its responsibilities under NEPA, FDA is suddenly showing a new fervor for solid waste and related environmental issues and seems bent on making post-consumer environmental impact, rather than safety under the FD&C Act, a primary consideration in deciding whether or not to clear new food packaging materials.

The most glaring example of FDA's new environmentalist mindset thus far is, of course, its decision last November to undertake the preparation of a full-scale Environmental Impact Statement (EIS) on polyvinyl chloride (PVC) before finalizing its proposed rule concerning PVC food packaging materials.^{2/}

Were FDA's excursions into the regulation of solid waste limited to the EIS affair, that would be bad enough. Unfortunately, this new environmental orientation at FDA is not isolated in the PVC rulemaking. As you may recall, in its May 23, 1988 letter to FDA recommending a comprehensive EIS on PVC, EPA suggested that the PVC rule "provides the FDA with a unique and important opportunity to foster the role of source reduction in the nation's approach to solid waste management."

^{2/} The only consolation in FDA's notice concerning its intent to prepare an EIS was the Agency's statement on the status of current PVC food-contact applications which clearly reaffirms the safety of PVC food-contact articles as well as confirming that all current food-contact uses are permissible as long as the proposed residual monomer limits are met.

EPA urged FDA to "look comprehensively at the cumulative impacts of this rule in the context of all PVC and similar plastic products used in food packaging materials." FDA, or more properly the Environmental Group in the food additive area, has taken this advice to its breast.

The Agency has begun requesting more elaborate and burdensome information on solid waste disposal and recycling in connection with its review of virtually all petitions for new food packaging materials. Components for laminated packages seem to be garnering special notice because of the Agency's belief that they present special recycling problems. The assumption behind FDA's environmental inquisition appears to be that if a packaging material cannot be shown to be recyclable or disposable other than by landfilling and/or incineration, it is unworthy of clearance.

FDA's expanded environmental inquiries have had the effect of stalling clearances of safe packaging materials and discouraging the submission of further petitions. Such an outcome is at odds with FDA's statutory obligation under the FD&C Act to clear safe food additives promptly. To date, however, FDA has turned a blind eye to the inconsistency between its responsibilities under the FD&C Act and its new-found desire to interject itself into the debate over solid waste.

FDA has, in my view, moved beyond its proper sphere of food safety regulation into the political arena where it will now attempt to pass judgment on the political and social acceptability of food packaging materials.

We are cautiously optimistic that with the soon-to-be-announced appointment of Dr. Fred R. Shank as Director of the FDA Center for Food Safety and Applied Nutrition, some positive changes may be in the offing with regard to FDA's regulation of plastic food packaging materials. It is hoped that the appointment of Dr. Shank will revitalize the Center and return it to its proper orientation -- food safety -- leaving socio-political issues to the state and federal legislative bodies. However, counting on FDA to change is a very "iffy" proposition. So while we consider the appointment of Dr. Shank good news holding great promise for the future, we have not ruled out the possibility that it may still be necessary to hold FDA's feet to the fire to get them to abandon their penchant for making environmental impact the be all and end all for clearing a packaging material.

All things considered, the only sure-fire way to ensure that FDA does not continue its recent role as the other environmental protection agency might be to see to it that any comprehensive solid waste proposal ultimately developed includes a provision ordering FDA, in effect, to use its very limited budget to assure the public of a healthy and safe food supply.

OTHER ENVIRONMENTAL ISSUES

Solid waste, of course, is not the only environmental issue affecting plastic packaging. California Proposition 65 and its progeny continue to bear watching. We need to guard against its proliferation in other jurisdictions while we work for the most reasonable application in California that the letter of the law will allow.

Other important issues include clean air legislation and regulation. Concern with air toxics is prompting legislative proposals. The same is true with the ozone non-attainment problems faced by many urban areas. We are continually barraged with new EPA proposals under eight different statutes.

The prospect of EPA action brings us, in a sense, full circle to our work together in the mid-1970s in the EPA vinyl chloride rulemaking. During the early 1970s, as we were confronted with new environmental legislation, we were told that industry was being asked to assume the true cost of its products by incurring large expenditures to reduce emissions. Much of the debate centered on the true risks and social costs posed by the manufacturing process. Air was no longer free.

In a similar way, we are finding that ultimate land disposal is no longer free or a trivial cost borne by the consumer. We are being asked to manage our products' entire life cycle.

Consumer acceptance and the growth of plastics packaging are a solid testament to its many benefits. Yet, there is a troubling dichotomy. The climate for plastic packaging today is something less than friendly. The packaging industry is held to blame for an ever increasing mountain of trash. If the trend of antiplastic solid waste measures continues, the future for plastic packaging could be bitterly cold. It is a daunting task before us, perhaps the most formidable the plastics industry has ever faced. But if we can find a way to fashion a reasonable plan to get the solid waste

situation under control, we can change all that. If we can lead the way out of the solid waste morass, we can preserve the bright future of plastic packaging and transform the plastics industry's image from that of a scapegoat to one of a heroic partner with the Government in crafting sensible societal solutions.

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