

LAIID ON DESKS 9/11/17
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GOVERNMENT SERVICES & ADMINISTRATION

RESOLUTION NO. 2017180

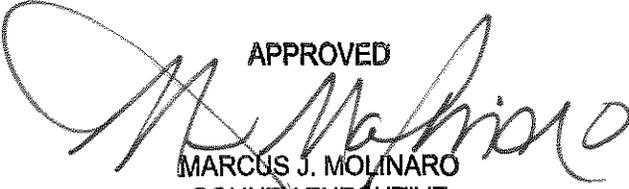
RE: LOCAL LAW NO. 5 OF 2017, A LOCAL LAW
PROHIBITING THE USE OF POLYSTYRENE FOAM
DISPOSABLE FOOD SERVICE WARE

Legislators PULVER, BORCHERT, RIESER, SAGLIANO, HORTON,
TYNER, WASHBURN, AMPARO, BRENDLI, BLACK, THOMES, INCORONATO, JETER-
JACKSON and TRUITT offer the following and move its adoption:

RESOLVED, that the Legislature of the County of Dutchess adopt Local Law No.
5 of 2017 which has been submitted this day for consideration by said Legislature.

CA-108-17
CRC/kvh/G-1717-B
08/31/17

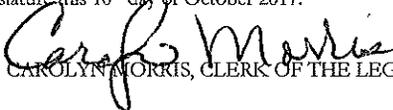
Fiscal Impact: None

APPROVED

MARCUS J. MOLINARO
COUNTY EXECUTIVE
Date 11/3/2017

STATE OF NEW YORK
ss:
COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 10th day of October 2017, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 10th day of October 2017.


CAROLYN MORRIS, CLERK OF THE LEGISLATURE

LOCAL LAW NO. 5 of 2017

RE: LOCAL LAW NO. 5 OF 2017, A LOCAL LAW
PROHIBITING THE USE OF POLYSTYRENE FOAM
DISPOSABLE FOOD SERVICE WARE

BE IT ENACTED, by the County Legislature of the County of Dutchess, New York, as follows:

Section 1. LEGISLATIVE INTENT.

Polystyrene **foam**, commonly referred to as Styrofoam, is a petroleum-based plastic made from the styrene monomer. Styrene has been identified as a potential human carcinogen by the United States Department of Health and Human Services and the International Agency for Research of Cancer.ⁱ The Environmental Protection Agency (EPA), Food and Drug Administration (FDA), and Occupational Safety and Health Administration (OSHA) have all set styrene exposure levels (EPA – drinking water, FDA – bottled water, and OSHA – workplace air).ⁱⁱ

Polystyrene **foam** is used in a number of common food container products. The substance has historically been difficult and costly to recycle on top of being poorly biodegradable.ⁱⁱⁱ ^{iv} Most of the polystyrene **foam** that ends up in landfills will be there 500 years from now. Polystyrene **foam** can also be very toxic when burned.^v

It is often found among common litter or in landfills. Because of the nature and ubiquity of polystyrene **foam**, it can threaten animal and human health.

It is for these reasons that Dutchess County seeks to ban the use of disposable food service ware containing polystyrene foam by chain food service establishments.

i <https://www.atsdr.cdc.gov/phs/phs.asp?id=419&tid=74>

ii <https://www.atsdr.cdc.gov/phs/phs.asp?id=419&tid=74>

iii http://thecif.ca/pdf/reports/130/130_report.pdf

iv <http://www.seas.columbia.edu/earth/wttert/sofos/nawtec/1992-National-Waste-Processing-Conference/1992-National-Waste-Processing-Conference-35.pdf>

v <http://sciencing.com/styrofoam-biodegradable-22340.html>

Section 2. PROHIBITION ON THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE.

- A. No Chain Food Service Establishment shall sell, package, or distribute prepared food in any disposable food service ware that contains polystyrene foam.
- B. The use of all disposable food service containers containing expanded polystyrene foam for sale, packaging or distribution of food at all county facilities, parks, or events is strictly prohibited.

Section 3. COMMISSIONER OF BEHAVIORAL AND COMMUNITY HEALTH'S AUTHORITY.

The responsibility of the administration and enforcement of this Local Law shall be with the Dutchess County Department of Behavioral and Community Health. The Commissioner of Behavioral and Community Health shall be vested with the power to promulgate rules and regulations consistent with this Local Law. Rules and Regulations are submitted herewith for adoption by local law. Any rules and regulations so promulgated shall be made available on the County of Dutchess' website in a manner approved by the Commissioner.

Section 4. REVERSE PREEMPTION.

This local law shall be null and void on the day that federal or New York State general legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent federal or state administrative agency issues and promulgates regulations preempting such action by the County of Dutchess. The County Legislature may determine via mere resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

Section 5. SEVERABILITY.

If any clause, sentence, paragraph, section, subdivision, or other part of this local law or its application shall be inconsistent with any federal or state statute, law, regulation or rule then the federal or state statute, law, regulation, or rule shall prevail. If any clause, sentence, paragraph, section, subdivision, or other part of this local law or its application shall be adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder of the local law which shall remain in full force and effect except as limited by such order or judgment.

Section 6. SEQRA DETERMINATION.

It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 NYECL Section 0101 et seq., and its implementing regulations, Part 617 of 6 NYCRR, that the adoption of this local law is a "Type II" Action within the meaning of Section 617.5(c)(20) and (27) of 6 NYCRR, and, accordingly, is of a class of actions which do not have a significant impact on the environment and no further review is required." [6 NYCRR Section 617.5(c) (20) and (27) apply to: "(20) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the

environment” and “(27) adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list”]

Section 7. EFFECTIVE DATE AND APPLICABILITY.

This local law shall be effective immediately upon filing in the Office of the Secretary of State and shall apply to all transactions occurring on or after the effective date of this local law. Enforcement shall not commence until January 1, 2019.

DUTCHESS COUNTY DEPARTMENT OF COMMUNITY AND BEHAVIORAL HEALTH - POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE RULES AND REGULATIONS

Section 1. DEFINITIONS.

The terms set forth below shall have the following meanings:

- A. "Chain Food Service Establishment" - Any establishment operating in Dutchess County that sells or otherwise provides Prepared Food for public consumption on, or off its premises and is part of a group of fifteen or more locations nationally, doing business under the same trade name.
- B. "Customer(s)" - Any person(s) obtaining Prepared Food from a Chain Food Service Establishment.
- C. "Disposable Food Service Ware" - All bowls, plates, cartons, cups, other containers, trays, or other items designed for one-time use on or in which any Food Service Establishment directly places and/or packages food or provides same to Customer(s) to place and/or package food or which are used by Customer(s) to consume or transport food. This includes, but is not limited to, service ware for takeout Prepared Food and/or leftovers from partially consumed meals prepared at or by Chain Food Service Establishments for consumption at a specific location. Excluded from this law and not included are single-use disposable items such as straws, cup lids, or utensils.
- D. "Commissioner" - The Dutchess County Commissioner of the Department of Behavioral and Community Health.
- E. "County" - The County of Dutchess.
- F. "Polystyrene foam" - Any blown polystyrene, expanded, and extruded foams (commonly referred to as Styrofoam, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques, including, but not limited to, fusion of polymer spheres (expandable bead polystyrene foam), injection molding, foam molding, and extrusion blow molding (extruded from polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, meat trays and egg cartons.

- G. "Prepared Food" - Any food or beverage which is (1) served in Dutchess County or (2) which is packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared on the premises. Prepared Food does not include raw meats, eggs, poultry and/or seafood sold for the purpose of cooking off premises.

Section 2. EXEMPTIONS.

A Chain Food Service Establishment may seek an exemption from the prohibition under Section 2 of the local law due to a "unique packaging hardship" under Subsection A of this Section or a "financial hardship" under Subsection B of this Section.

- A. The Chain Food Service Establishment must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a "unique packaging hardship" exemption.
- B. The Chain Food Service Establishment must demonstrate both of the following to qualify for a "financial hardship" exemption: (1) a gross income under \$500,000 on their annual income tax filing for the most recent tax year, and (2) with respect to each specific and necessary Polystyrene foam Disposable Food Service Ware, that there is no feasible alternative that would cost the same or less than the Polystyrene foam Disposable Food Service Ware.
- C. The Chain Food Service Establishment may submit a written application for an exemption on a form provided by the Department of Behavioral and Community Health. The Commissioner or his/her designee may require the applicant to submit additional information: or documentation to make a determination regarding the exemption request. Within thirty (30) days of receiving a completed application and supporting documentation, if any, the Commissioner must either grant or deny the applicant's request for an exemption and must notify the applicant of his or her determination. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to twelve (12) months. The Chain Food Service Establishment must apply for a new exemption period no later than sixty (60) days prior to the expiration of the then current exemption period to preserve a continuous exemption status. Each application shall be reviewed anew and will be based on the most current information available. The determination of the Commissioner shall be final and is not is subject to appeal.

Section 3. PENALTIES.

Violations of this local law shall be enforced as follows:

- A. For the first violation, the Commissioner, or his or her designee, upon a determination that a violation of this local law has occurred, shall issue a written warning notice to the Chain Food Service Establishment which will specify the violation and the appropriate penalties in the event of future violations.
- B. Thereafter, the following penalties shall apply:

1. First Offense. Any Chain Food Service Establishment guilty of a first offense shall be guilty of a violation and shall be fined an amount not to exceed two hundred and fifty (\$250) dollars.
2. Second Offense. Any Chain Food Service Establishment guilty of a second offense shall be guilty of a violation and shall be fined an amount not to exceed five hundred (\$500) dollars.
3. Third and Subsequent Offense. Any Chain Food Service Establishment guilty of a third or subsequent offense shall be guilty of a violation and shall be fined an amount not to exceed one thousand (\$1,000) dollars.

ⁱ <https://www.atsdr.cdc.gov/phs/phs.asp?id=419&tid=74>

ⁱⁱ <https://www.atsdr.cdc.gov/phs/phs.asp?id=419&tid=74>

ⁱⁱⁱ http://thecif.ca/pdf/reports/130/130_report.pdf

^{iv} <http://www.seas.columbia.edu/earth/wtert/sofos/nawtec/1992-National-Waste-Processing-Conference/1992-National-Waste-Processing-Conference-35.pdf>

^v <http://sciencing.com/styrofoam-biodegradable-22340.html>

FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS *(To be completed by requesting department)*

Total Current Year Cost \$ _____

Total Current Year Revenue \$ _____
and Source

Source of County Funds *(check one)*: Existing Appropriations, Contingency,
 Transfer of Existing Appropriations, Additional Appropriations, Other *(explain)*.

Identify Line Items(s):

Related Expenses: Amount \$ _____
Nature/Reason:

Anticipated Savings to County: _____

Net County Cost (this year): _____
Over Five Years: _____

Additional Comments/Explanation:

The Department of Behavioral and Community Health will perform the enforcement function of this legislation within their current inspection and complaint processes and policies. There will not be the need for additional staff resources or other related costs.

Prepared by: Jessica White, Budget Director

Prepared On: 8/28/2017

SUMMARY

Provides that no chain food service establishment, which is defined as any establishment operating in Dutchess County that is part of a group of 15 or more locations nationwide, shall sell, package, or distribute prepared food in any disposable food service ware that contains polystyrene foam. Further, prohibits the use of all disposable food service containers containing polystyrene foam for sale, packaging, or distribution of food at all county facilities, parks, or events.

The Commissioner of the Department of Behavioral and Community Health (DBCH) shall have the authority to administer and enforce this ban. DBCH shall be responsible for issuing written warnings, levying fines on violators, and granting/denying exemption applications. The first violation by a chain food service establishment shall result in a written warning notice that specifies the penalties in the event of future violations. The Commissioner may levy fines no greater than \$250 for the first offense, \$500 for the second offense, and \$1000 for the third and subsequent offense(s).

The local law shall take effect immediately, but enforcement shall not commence until January 1, 2019.

JUSTIFICATION

Polystyrene, commonly referred to as Styrofoam, is a petroleum-based plastic made from the styrene monomer. Styrene has been identified as a potential human carcinogen by the Department of Health and Human Services and the International Agency for Research of Cancer.ⁱ The Environmental Protection Agency (EPA), Food and Drug Administration (FDA), and Occupational Safety and Health Administration (OSHA) have all set styrene exposure levels (EPA – drinking water, FDA – bottled water, and OSHA – workplace air).ⁱⁱ

Polystyrene is used in a number of common food container products. The substance is difficult and costly to recycle on top of being poorly biodegradable.ⁱⁱⁱ It is often found among common litter or in landfills. Because of the nature and ubiquity of polystyrene, it can threaten animal and human health.

It is for these reasons that Dutchess County seeks to ban the use of disposable food service ware containing polystyrene foam by chain food service establishments.

SUPPORT

In the past, Riverkeeper has supported local bans on the use of polystyrene based food containers. Other environmental advocacy groups would also be likely to support the ban. When the Albany County Legislature was debating banning the use of polystyrene, the League of Women Voters offered their support for banning the use of polystyrene based food containers.

OPPOSITION

The New York State Restaurant Association, DART Container Corporation, and KFC have been vocal opponents of polystyrene based food containers bans. DART and KFC were outspoken opponents of Ulster County's ban.

ⁱ <https://www.atsdr.cdc.gov/phs/phs.asp?id=419&tid=74>

ⁱⁱ <https://www.atsdr.cdc.gov/phs/phs.asp?id=419&tid=74>

ⁱⁱⁱ http://thecif.ca/pdf/reports/130/130_report.pdf

^{iv} <http://www.seas.columbia.edu/earth/wtert/sofos/nawtec/1992-National-Waste-Processing-Conference/1992-National-Waste-Processing-Conference-35.pdf>

CAROLYN MORRIS
CLERK



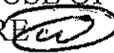
LEIGH WAGER
DEPUTY CLERK

DUTCHESS COUNTY LEGISLATURE

MEMORANDUM

TO: All Legislators

FROM: Carolyn Morris, Clerk, Dutchess County Legislature

RE: Resolution No. **2017180**, A LOCAL LAW PROHIBITING THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE 

DATE: September 27, 2017

Pursuant to Rules 4.5 I of the *Permanent Rules of the Dutchess County Legislature* enclosed is an amended Local Law entitled, "Resolution No. **2017180**, A LOCAL LAW PROHIBITING THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE". Amendments are in bold.

Please consider this law as being "Re-Laid on the Desks". If you have any questions, please contact my office.

lw

Background for 2017180

Wager, Leigh

From: Morris, Carolyn on behalf of CountyLegislature
Sent: Thursday, October 05, 2017 9:40 AM
To: CountyLegislature
Cc: Wager, Leigh
Subject: FW: Resolution No. 2017180

Carolyn Morris

Clerk

Dutchess County Legislature

845.486.2100

From: Steve MacAvery [<mailto:smacavery2@live.com>]
Sent: Wednesday, October 04, 2017 10:24 PM
To: CountyLegislature
Subject: Resolution No. 2017180

The Dutchess County Environmental Management Council (DCEEMC) has reviewed Resolution No. 2017180, Prohibiting the Use of Polystyrene Foam Disposable Food Service Ware, and supports the adoption of Resolution No. 2017180.

Steve MacAvery
Chair, Dutchess County Environmental Management Council

Sent from Mail for Windows 10

Background to 2017180

Dear Chairman Borchert, Members of the County Legislature,

I am writing on behalf of the American Chemistry Council and its Plastics Division regarding the agenda item concerning polystyrene foam food service ware. We only became aware of this matter on Friday, October 6th and were not aware that the County Legislature was considering such legislation. Attached is a memo in opposition but more importantly a memo containing information that probably was not raised at the committee meetings and which also corrects a number of factual inaccuracies contained in the legislative preamble and public realm about polystyrene. We would respectfully request that this item be removed from the Consent Calendar and sent back to committee for a full airing of the issues and for the opportunity to bring forth additional educational information regarding the benefits of polystyrene, the impact this legislation will have on small businesses in Dutchess County and the broader economic impact on companies in the New York State and the Hudson Valley that manufacturer polystyrene and provide employment to residents of the region. I would very much appreciate the opportunity to address the County Legislature at its meeting tomorrow evening. Thank you for your time and attention to this matter.

Sincerely,

Stephen Rosario, CAE

Senior Director
Northeast Region
American Chemistry Council
11 N. Pearl Street, Suite 1400
Albany, NY 12209
steve_rosario@americanchemistry.com
(518) 432-7835



Plastics Food Service Packaging Group

October 10, 2017

Hon. Dale Borchert
Chairman
Dutchess County Legislature
County Office Building
22 Market Street
Poughkeepsie, NY 12601

Subject: Resolution 2017180: Local Law No. ____ for 2017– A Local Law of the County of Dutchess, New York Regulating the Use of Polystyrene Foam Disposable Food Service Ware in Chain Foodservice Establishments– ACC/PFPG Oppose Comments

Dear Chairman Borchert and fellow Dutchess County Legislators,

We are writing to express our concerns about Resolution 2017180, the proposed local law __ for the County of Dutchess, regulating the use of polystyrene foam disposable food service ware by chain food service establishments in Dutchess County. The members of our group, the Plastics Foodservice Packaging Group (PFPG) of the American Chemistry Council (ACC), represent the leading suppliers and manufacturers of plastics foodservice packaging products, including polystyrene food and beverage containers.

Our industry has many companies whose employees live and work in New York State, including Dutchess County, pay taxes, employ people in hard to find jobs in the Northeast, and will be adversely impacted by this proposal.

We support the Dutchess County's ongoing efforts make it more sustainable, including efforts to reduce waste and improve recycling. However well-intentioned, banning polystyrene foam foodservice ware and requiring the use of alternative compostable products, when an infrastructure to adequately compost these products does not exist, will not improve sustainability in the County.

We urge the County Legislature to defer this bill, since the premise is based on information that shows polystyrene foodservice products are not recycled – when in fact they are recycled in many communities.

Recycling of foam – a better solution than a ban

Recycling opportunities are rapidly emerging. In New York, there are polystyrene foam foodservice recycling program in Yonkers, NY, - <http://www.homeforfoam.com/yonkers-invests-foam-recycling> - and in Madison County, NY.- <http://www.fpi.org/index.php?bid=100&storyid=217&ecf34Msi=213&emi8s9Kj=247903> Last year Madison County Department of Solid Waste began a pilot program accepting foam as part of its recycling program including clean and dry cups, take-out food containers, egg cartons and protective packaging. The county then purchased and installed a densifier to expand on the program's success. The densifier compacted the collected materials into condensed polystyrene bricks, which were then shipped to end markets and recycled into new products. Dutchess County can join Yonkers and Madison County in recycling foam and providing consumers with low cost insulating food containers that cost two to five times less than heavier and less performance based food service ware.

There are also numerous locations in the U.S. where people can drop-off foam foodservice packaging for recycling, including the many grocery stores that accept egg cartons and clean foodservice packaging. Recycled polystyrene is used to make picture frames, egg cartons, CD cases and packaging.

There are many different types of programs throughout the country as well. For example, many communities in California, including Los Angeles and Sacramento, collect polystyrene foodservice packaging in curbside recycling programs. Some school districts in Illinois, Michigan, Mississippi and California recycle foam lunch trays. The foodservice industry through its Foam Recycling Coalition's launched a new grant program this year to help fund infrastructure for the collection, processing and marketing of products made for polystyrene foam (www.fpi.org/recyclefoam). The grant program targets post-consumer polystyrene foam products such as foodservice packaging (i.e., cups, plates, bowls, clamshells, cafeteria trays); egg cartons; meat trays; and protective "transport" packaging.

What about the New York City decision on polystyrene foam?

On December 31, 2014, New York City Sanitation Commissioner decided not to include polystyrene foam packaging in the city's curbside recycling program. This means that most foam foodservice packaging and foam protective packaging will continue to be sent to landfills instead of recycled. The decision by New York City illogically ignores an offer to recycle these materials at no cost to the city. Worse, it forces the use of other materials that will be sent to landfills, because food-contaminated paper or cardboard and paper take-out containers 'with heavy wax or plastic coatings are not accepted for recycling in the city. These alternative foodservice packaging materials should be held to the same standard as foam packaging. Burying recyclable materials in landfills is not a sustainable solution for the environment or city residents.

Based on New York City's decision, residents will not be able to recycle any foam packaging – meat trays, egg cartons, protective packaging, foam cups – at curbside, and the use of foam foodservice packaging will be restricted. This will neither increase recycling nor reduce litter. The decision by New York City illogically ignores an offer to recycle these materials at no cost to the city. Worse, it forces the use of other materials that will be sent to landfills, because food-contaminated paper or cardboard and paper take-out containers 'with heavy wax or plastic coatings are not accepted for recycling in the city. These alternative foodservice packaging materials should be held to the same standard as foam packaging.

While New York City recently rejected an opportunity to recycle all polystyrene foam packaging, nearby Yonkers, NY, has already implemented their polystyrene foam recycling program.

Resolution 2017180 is based on misinformation about polystyrene foam food service ware

This bill is also based on *misinformation* about the alleged health and safety impacts of using this product – which has been approved by FDA and use safely for over 50 years.

Here's *information based on studies/independent experts* that should demonstrate how the issues of foodservice litter, trash, and recycling/recovery are being addressed and how Dutchess County can capitalize on these programs without implementing a product ban such as those suggested in this ordinance. *We ask that you research and consider this information to help make an informed decision:*

Polystyrene is approved as safe for use in foodservice by the Food and Drug Administration (FDA). FDA has determined for more than 50 years that polystyrene is safe for use in foodservice products. A common but unnecessary worry about many plastics in foodservice is that they may have tiny amounts of constituents that can make their way into food. This is precisely one of the reasons why the FDA reviews and approves every material to be used in contact with

Food for safety -- before it hits the market -- and this includes a look at what might migrate out of the material, so FDA scientists and regulators are fully satisfied about the safety of the material.,

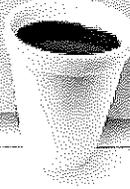
Polystyrene should not be confused with styrene. Polystyrene and styrene are different substances. Styrene, a liquid, and polystyrene, a solid are fundamentally different. Styrene is a liquid that can be chemically linked to create polystyrene, which is a solid plastic that displays different properties. Polystyrene is used to make a variety of important consumer products, such as foodservice containers, cushioning for shipping delicate electronics, and insulation. Equating polystyrene with styrene is like equating a diamond with carbon. They are not the same substance.

National Toxicology Program (NTP): "Let me put your mind at ease ..." NTP Director Dr. Linda Birnbaum, PhD., was widely quoted in Associated Press reports in June 2011 when the NTP decided to include styrene in its 12th Report on Carcinogens: "Let me put your mind at ease right away about polystyrene foam ... In finished products, certainly styrene is not an issue." Experts from the U.S. National Institute of Environmental Health Sciences (NIEHS) and the American Cancer Society, along with NTP's Associate Director John Bucher, have reached the same conclusions as Dr. Birnbaum. "Styrene should not be confused with polystyrene (foam). Although styrene, a liquid, is used to make polystyrene, which is a solid plastic, we do not believe that people are at risk from using polystyrene products" (NIEHS). Attached are statements from key health agency experts stating that polystyrene foam foodservice ware made from styrene causes no concern for use by consumers in the marketplace.

The Safety of Styrene in Selected Foods and Polystyrene Foam Foodservice Cups - Styrene occurs naturally in foods such as strawberries and cinnamon. Whether naturally occurring in foods and beverages such as strawberries, coffee beans or cinnamon, or produced synthetically, most people encounter styrene as a part of their daily lives, though in small amounts. Scientific studies have shown that the small amounts of styrene consumers may be exposed to are not harmful; studies have also shown that, should exposure occur, styrene does not stay in the body for long and is rapidly metabolized and excreted. There is more styrene found in cinnamon, beer and beef than there is in a foam cup. For more detailed information, visit: <http://youknowstyrene.org/health-and-safety/consumers/>

Styrene, Food and Packaging	
Food/Beverage (No man-made styrene contact)	Styrene Levels Measured (parts per billion)
Cinnamon	170-39,000
Beer	10-200
Beef	5.3-6.4
Coffee Beans	1.6-6.4
Strawberries	0.37-3.1
Peanuts	1-2.2
Wheat	0.4-2

FOR COMPARISON:
Styrene exposure level from a polystyrene cup:
5-10
parts per billion



Bans Don't Work – and Polystyrene foam foodservice is a small part of litter (1.5%). While all litter should be reduced, polystyrene foam foodservice packaging makes up only 1.5 percent of litter, according to a May 2012 national report by environmental consulting firm Environmental Resources Planning. Banning a product like polystyrene foam foodservice ware and substituting it with a heavier product will not reduce litter. *Substituting one type of litter for another is not a smart strategy.* For example, when San Francisco placed restrictions on the use of certain plastic foodservice products, the city found that alternatives became more littered. (Source: "The City of San Francisco Streets Litter Re-audit 2008, prepared for the City of San Francisco Environment Department, July 4, 2008, http://sfenvironment.org/downloads/library/2008_litter_audit.pdf)

Landfills, Biodegradation – According to the most recent USEPA Characterization of Municipal Solid Waste report – link http://www.epa.gov/osw/nonhaz/municipal/pubs/MSWcharacterization_fnl_060713_2_rpt.pdf, all plastic foodservice products contribute approximately 1% of waste generated, whereas paper and paperboard make up the largest components of MSW materials generated (28%). Landfills are not filling up with polystyrene foam or plastics – they are filling up with paper and paperboard as the largest contributors.

While popular culture has led many to believe that burying our nation's garbage in landfills is sort of like creating big compost heaps, modern landfills are specifically designed to minimize decomposition. The small amount of degradation that does occur in a landfill often generates methane, a much more potent greenhouse gas than CO₂. Products like polystyrene foam are inert and do not break down in landfills – that is a positive attribute. The Biodegradable Products Institute (BPI), a not-for-profit association of key individuals and groups from government, industry, and academia, has a mission to education manufacturers, legislators and consumers about the importance of scientifically based standards for compostable materials which biodegrade in large composting facilities. Under their “Myths of Biodegradation”, BPI states:

Myth: Biodegradable products are the preferred environmental solution because waste simply biodegrades in the landfill.

Reality: Nothing biodegrades in a landfill because nothing is *supposed* to.

<http://www.bpiworld.org/Default.aspx?pageId=190439>

Small Part of Litter – According to a 2012 study, commonly used polystyrene foam foodservice products make up 1.5 percent of litter. The report compiled information from nineteen litter surveys conducted in the U.S. and Canada from 1994 to 2009, including a 2008 national survey of 240 sites. Evaluating only the surveys conducted since 2000 yields an even lower median value of 1.1 percent. (Source: “[The Contribution of Polystyrene Foam Food Service Products to Litter](#),” Environmental Resources Planning, Gaithersburg, MD, May 2012)

Composting: Not a Simple Solution – Many people believe that communities could easily compost paper-based and other “biodegradable” foodservice products. But it's not that simple. These used foodservice items would still need to be collected, separated and delivered to a large-scale composting facility, of which there are few in the U.S. In the absence of such a facility, these products generally end up in landfills. Once in landfills, they do not readily break down because modern landfills are actually designed to retard decomposition.

Environmental Footprint – A full environmental picture is critical when comparing foodservice options. It's easy to focus only on a product's end of life since that's what consumers see – but the environmental footprint of any product includes all of its impacts, such as raw material use, resources used in manufacture, fuel use and emissions in transport and more (see Sanitation above). Polystyrene foodservice packaging uses less energy and resources to manufacture than comparable paper-based products, leaving a lighter footprint. For example, a polystyrene foam cup requires about 50% less energy to produce – and creates significantly fewer greenhouse gas emissions – than a similar coated paper-based cup with its corrugated sleeve. A link to the release of the study

(<http://www.americanchemistry.com/Media/PressReleases/Transcripts/ACC-news-releases/New-Study-Polystyrene-Foam-Cups-and-Plates-Use-Less-Energy.html>) as well as to the full peer reviewed study is provided here - <http://plasticfoodservicefacts.com/Life-Cycle-Inventory-Foodservice-Products>.

Used polystyrene foodservice can help contribute an energy solution, too. Polystyrene foodservice also can be used as a source of energy. Polystyrene actually has more captured energy than coal. This energy is released when municipal solid waste is processed at waste-to-energy recovery facilities. The U.S. has 86 such facilities that can recapture this energy and put it to good use, creating a domestic energy source to power homes and business.

The Polystyrene Foam Industry Creates and Maintains Jobs in New York State

The Polystyrene foam food service industry provides a ripple effect in creating and maintaining jobs across the U.S. in

New York State alone, four companies with nine facilities employ 1,563 people and contribute \$47.5 million in payroll and pay \$2.3 million in state taxes. These companies make products used by government agencies, restaurants, grocers, schools, hospitals and food establishments in New York. This legislation would severely impact job creating companies. Also, polystyrene food service products generally are more economical--whole sale costs can be two, three, four, up to five times less than their paper-based counterparts. Such a mandate would also create a ripple down effect and elevate the costs to local businesses who use food service.

Fiscal impact of the ban on polystyrene foam foodservice in the Dutchess County, NY

An independent fiscal impact study conducted on what the replacement costs to consumers, businesses and agencies is very relevant for Dutchess County. The average cost premium to replace polystyrene foam foodservice purchases will be 60% for the lowest cost replacement scenario. In other words, for every \$1 spent now by Dutchess County chain foodservice establishments on polystyrene foam food service ware, the cost to purchase complying alternative food service ware would require an expenditure of \$1.60. The average cost premium will jump to 140% if compostable replacements are required, or an expenditure of \$2.40. The full report can be viewed at:

<http://plasticfoodservicefacts.com/Pages/Fiscal-Economic-Impacts-of-a-Ban-on-Plastic-Foam-Foodservice-and-Drink-Containers-in-New-York-City.pdf> .

The Dutchess County proposed ban on Foodservice Ware will not Achieve Sustainability Goals. Sustainability goals for Dutchess County will not be met by promoting compostable products where opportunities to compost these products don't currently exist in the County, and by failing to examine recycling opportunities for polystyrene foam as many communities have. A polystyrene foam cup, for example, requires one-third of the energy to produce compared to some compostable alternatives. Paper cups would also be banned as part of the ordinance since they are not recyclable.

Polystyrene foodservice saves fuel, energy and greenhouse gas emissions to make and transport. Polystyrene foodservice uses less energy and resources to manufacture than alternatives. And as very lightweight plastic, shipping polystyrene saves precious fuel. A full life cycle study highlights the tradeoffs and advantages of polystyrene foam foodservice from an overall energy, air, water and waste perspective (<http://plasticfoodservicefacts.com/Life-Cycle-Inventory-Foodservice-Products>)

Recycling solutions for post-use foodservice are emerging – new grant program for polystyrene foam announced.

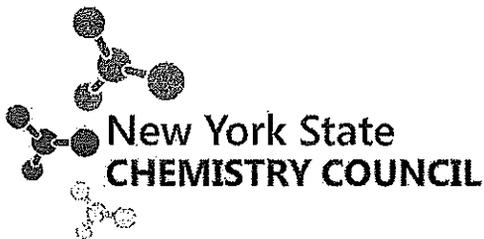
Polystyrene foam foodservice packaging is being recycled in many communities across the country. The foodservice industry through its Foam Recycling Coalition's launched a new grant program this year to help fund infrastructure for the collection, processing and marketing of products made for polystyrene foam (www.fpi.org/recyclefoam). The grant program targets post-consumer polystyrene foam products such as foodservice packaging (i.e., cups, plates, bowls, clamshells, cafeteria trays); egg cartons; meat trays; and protective "transport" packaging. Communities like Dutchess County, NY, can apply for such grants.

A new study by the Berkeley Research Group (*Market Analysis of End Uses for Recycled Post-Consumer expanded polystyrene food ware*) found nearly 140 companies that process or use recycled post-consumer foam, including food ware, in the U.S. and Canada

(<http://www.fpi.org/fpi/files/ccLibraryFiles/Filename/00000000779/BRG%20Memo%20Report%2010-9-2014.pdf>) .

Banning this product when it can be recycled is not a sustainable solution.

Variety of Polystyrene Recycling Programs: Polystyrene foodservice products are recycled in various ways in many communities, depending on the local solid waste program. If a community, a school, a restaurant or supermarket wants to take advantage of plastic foodservice products, there are several ways to make that happen. Recycling polystyrene foam is fairly simple...but not easy. The plastic products must be collected (clean) and delivered to a facility close enough to make the transport economical. (Because foam packaging is more than 90% air, most programs "densify" the products to get more on a truck.) The plastic is then simply ground up, heated and recast into plastic pellets that then are sold to companies that make products such as "green building" construction materials, consumer products and plastic packaging.



Hon. Marcus Molinaro
Dutchess County Executive
County Office Building
22 Market Street
Poughkeepsie, NY 12601

October 24, 2017

Re: **LETTER-IN-OPPOSITION to Resolution #2017180** prohibiting the use of polystyrene food and beverage containers by chain food service establishments

The referenced **Resolution #2017180** would ban the use of polystyrene foam containers by chain restaurants, food service establishments and food vendors to package food or beverages.

The **New York State Chemistry Council**, the domestic trade association representing many of the major chemical manufacturers, re-formulators, distributors and users engaged in the business of chemistry in the state, **STRONGLY OPPOSES** the Resolution on behalf of its member companies.

Few substances are as versatile and compatible for food service ware use and beverage containers than polystyrene. It keeps hot food hot and cold food cold and doesn't transmit the heat or cold to the user's body. Most food customers prefer its use and it is thus a staple of modern "food on the go" containers.

Polystyrene has been approved by the U.S. Food and Drug Administration (FDA) as safe to use in contact with all hot and cold foods and beverages. Thus there is no unsafe migration of chemicals from the plastic foam into consumables, contrary to claims by activists. Moreover, if polystyrene is disposed of in solid waste management facilities (constituting about 1% of total solid waste), it is a stable polymer compound that does not biodegrade therein and thus cause any environmental damage via air emissions, or land or groundwater pollution.

Polystyrene, with the recyclable "chasing arrows" polymer designation of "6," is now collected in many municipal, single-stream curbside recycling collection programs, including the City of Los Angeles and in New York, the County of Madison and City of Yonkers. Moreover, polystyrene containers are lighter than paperboard and other alternative substance containers, and thus utilize less energy to manufacture, distribute and transport over its life cycle. Interestingly, one of the possible final end uses of polystyrene is as an energy source itself in waste-to-energy (WTE) recovery facilities, since polystyrene has more captured energy per ton than coal.

Steve Rosario, Executive Director
Margaret Gorman, Director of Government Relations
Tom Faist, Legislative Counsel

11 North Pearl Street, #1400
Albany, NY 12207
518.426.9516

Finally, New York is home to a number of polystyrene container manufacturers and distributors that employ hundreds, if not thousands of New Yorkers, many in Upstate areas that continue to be hard hit economically. These are good paying blue collar manufacturing jobs.

The unique thermal properties of polystyrene and its lightweight versatility and stability add greatly to the safety and utility of food service ware and beverage containers that are widely used in commercial and retail food service applications. This, coupled with its overall energy efficiency and recyclability, plus its importance to the State's manufacturing economy, makes it an eminently desirable and reliable product.

As such, for the reasons stated herein, on behalf of its member companies, the New York State Chemistry Council **STRONGLY OPPOSES Resolution #2017180** and **URGES THAT IT BE VETOED.**

Respectfully submitted,

Stephen M. Rosario, CAE
Executive Director

Margaret Gorman
Director Governmental Relations

Thomas W. Faist, Esq.
Legislative Counsel

Steve Rosario, Executive Director
Margaret Gorman, Director of Government Relations
Tom Faist, Legislative Counsel

11 North Pearl Street, #1400
Albany, NY 12207
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There is a website that shows different programs – schools, restaurants, cities, national parks – and also videos and websites that walk through the various aspects of this type of plastic recycling:
http://www.plasticfoodservicefacts.com/main/Environment/Recycling_1.html

Where do people have access to Polystyrene Foam Foodservice is Actually Recycled? 65 cities in California (representing 22% of the population) have PS foam recycling going on – both foodservice polystyrene foam and what we call EPS (expanded PS foam) protective packaging (shape molded transport packaging, PS “peanuts”/loose fill). There are recyclers like Nepco in California that collect, process and make picture frames out of the recycled polystyrene foam. This includes the City of Los Angeles, our nation’s second largest city, which collects polystyrene packaging in its curbside recycling program. The LA program accepts foodservice products, like foam cups and take-out containers—residents simply clean and toss them in the blue bin with their other recyclables.

Can Polystyrene Foam Recycling Opportunities be available to Dutchess County?

Waste disposal, including recycling, is generally a local municipal issue – with cities, counties, and jurisdictions developing and implementing programs that best fit their needs. Recyclables like polystyrene foam can be included in those programs, if the various stakeholders involved work together.

The plastics foodservice industry has experience and interest in working with localities, and feels positive programs like recycling, recovery from waste, and waste reduction go a long way in meeting sustainability goals for government and industry alike. The new grant program from the Foam Recycling Coalition described above is another effort aimed at adding polystyrene foam to city recycling programs across the U.S.

Summary

Based on the benefits of polystyrene foodservice as part of the waste management solution (rather than the problem), as well as energy recovery and fiscal benefits, **we would urge Dutchess County to not act on this proposed ban (resolution 2017180) and in fact work with our industry to educate the County on real solutions to address litter and solid waste.** We appreciate your feedback, and please let us know if you have any questions on this material, or need additional information.

Feel free to contact us if you have questions, or need additional information.

Regards,

Sincerely,



Mike Levy, Director
Plastics Foodservice Packaging Group (PFPG)
(tel: 202-249-6614; e-mail: mike_levy@americanchemistry.com)

Steve Rosario, Government Relations
American Chemistry Council
(tel: 770-421-2991; e-mail: steve_rosario@americanchemistry.com)



October 12, 2017
The Honorable Marcus Molinaro
Dutchess County Executive
22 Market St.
Poughkeepsie, NY 12601

Subject: Resolution 2017180: Local Law No. ____ for 2017—A Local Law of the County of Dutchess, New York Regulating the Use of Polystyrene Foam Disposable Food Service Ware in Chain Food Service Establishments—ACC/PFPG Oppose Comments

Dear Honorable Marcus Molinaro and fellow Dutchess County Legislators,

We are writing to express our concerns about Resolution 2017180, the proposed Law ____ for the County of Dutchess, regulating the use of polystyrene foam disposable food service ware by chain food service establishments in Dutchess County. Creative Sales & Marketing sells disposable packaging throughout the New York/New Jersey metropolitan area representing the leading suppliers and manufacturers of the plastics food service packaging products, including polystyrene food and beverage containers.

Our company has many employees who live and work in New York State, sell products in Dutchess County, pay taxes, employ people in hard to find jobs in the Northeast, and will be adversely impacted by this proposal.

We support the Dutchess County's ongoing efforts to make it more sustainable, including efforts to reduce waste and improve recycling. However well-intentioned, banning polystyrene foam food service ware and requiring the use of alternative compostable products, when an infrastructure to adequately compost these products does not exist, will not improve sustainability in the County.

We urge the County Legislature to defer this bill, since the premise is based on information that shows polystyrene food service products are not recycled—when in fact they are recycled in many communities.

Sincerely,

Bob Greenstein
Sales Representative

The foregoing Resolution No. 2017180, Local Law No. 5 of 2017, was laid on desks on September 11, 2017, and considered on October 10, 2017.

Discussion at that time proceeded as follows:

Legislator Flesland made a motion to table the foregoing resolution, duly seconded by Legislator Incoronato.

Roll call on the foregoing motion resulted as follows:

AYES: 3 Flesland, Incoronato, Forman

NAYS: 21 Borchert, Miccio, Bolner, Strawinski, Kakish, Sagliano, Black, Roman, Truitt, Brendli, Rieser, Jeter-Jackson, Tyner, Metzger, Landisi, Pulver, Horton, Coviello, Thomes, Surman, Washburn

ABSENT: 1 Amparo

Motion defeated.

Legislator Flesland questioned if the Legislature opened itself up to a lawsuit for only going after one business and asked if polystyrene should be banned completely.

Scott L. Volkman, Legislative Counsel, stated "I wasn't prepared to offer an opinion on the subject but I have reviewed the legality of the constitutionality of a targeted ban like this with the county attorney's office and we're comfortable with that in its current form it would be acceptable to ban it the way it's supposed."

Roll call vote at that time resulted as follows:

AYES: 23 Borchert, Miccio, Bolner, Strawinski, Kakish, Sagliano, Black, Roman, Truitt, Brendli, Rieser, Jeter-Jackson, Tyner, Metzger, Incoronato, Forman, Landisi, Pulver, Horton, Coviello, Thomes, Surman, Washburn

NAYS: 1 Flesland

ABSENT: 1 Amparo

Resolution adopted.

The County Executive held a public hearing on the foregoing Local Law on October 25, 2017 and signed it into Law on November 3, 2017. The effective date of the Local Law was November 13, 2017.

Government Services and Administration Roll Call

District	Name	Yes	No
District 3 - Town of LaGrange	Borchert*		
District 17 - Town and Village of Fishkill	Miccio*		
District 13 - Towns of LaGrange, East Fishkill, and Wappinger	Bolner*		
District 20 - Town of Red Hook	Strawinski*	<i>absent</i>	
District 14 - Town of Wappinger	Amparo*		
District 1 - Town of Poughkeepsie	Kakish		
District 2 - Towns of Pleasant Valley and Poughkeepsie	Sagliano (C)		
District 4 - Town of Hyde Park	Black		
District 10 - City of Poughkeepsie	Jeter-Jackson		
District 19 - Towns of North East, Stanford, Pine Plains, Milan	Pulver		
District 23 - Towns of Pawling, Beekman and East Fishkill	Thomes		
District 24 - Towns of Dover and Union Vale	Surman (VC)		

Present: 11
 Absent: 1
 Vacant: 0

Resolution:
 Motion:

Total: 11 0
 Yes No
 Abstentions: 0

2017180 A LOCAL LAW PROHIBITING THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE

Date: October 5, 2017

Roll Call Sheets

District	Last Name	Yes	No
District 3 - Town of LaGrange	Borchert		1
District 17 - Town and Village of Fishkill	Miccio		2
District 13 - Towns of LaGrange, East Fishkill, and Wappinger	Bolner		3
District 20 - Town of Red Hook	Strawinski		4
District 14 - Town of Wappinger	Amparo	<i>absent</i>	
District 1 - Town of Poughkeepsie	Kakish		5
District 2 - Towns of Pleasant Valley and Poughkeepsie	Sagliano		6
District 4 - Town of Hyde Park	Black		7
District 5 - Town of Poughkeepsie	Roman		8
District 6 - Town of Poughkeepsie	Flesland	1	
District 7 - Towns of Hyde Park and Poughkeepsie	Truitt		9
District 8 - City and Town of Poughkeepsie	Brendli		10
District 9 - City of Poughkeepsie	Rieser		11
District 10 - City of Poughkeepsie	Jeter-Jackson		12
District 11 - Towns of Rhinebeck and Clinton	Tyner		13
District 12 - Town of East Fishkill	Metzger		14
District 15 - Town of Wappinger	Incoronato	2	
District 16 - Town of Fishkill and City of Beacon	Forman	3	4
District 18 - City of Beacon and Town of Fishkill	Landisi		15
District 19 - Towns of North East, Stanford, Pine Plains, Milan	Pulver		16
District 21 - Town of East Fishkill	Horton		17
District 22 - Towns of Beekman and Union Vale	Coviello		18
District 23 - Towns of Pawling, Beekman and East Fishkill	Thomes		19
District 24 - Towns of Dover and Union Vale	Surman		20
District 25 - Towns of Amenia, Washington, Pleasant Valley	Washburn		21

Present: 24
 Absent: 1
 Vacant: 0

Resolution:
 Motion:

Total: 3 21
 Yes No
 Abstentions: 0

*Move to Table
 AFJI*

10.10.17

2017180

Roll Call Sheets

District	Last Name	Yes	No
District 3 - Town of LaGrange	Borchert	1	
District 17 - Town and Village of Fishkill	Miccio	2	
District 13 - Towns of LaGrange, East Fishkill, and Wappinger	Bolner	3	
District 20 - Town of Red Hook	Strawinski	4	
District 14 - Town of Wappinger	Amparo	absent	
District 1 - Town of Poughkeepsie	Kakish	5	
District 2 - Towns of Pleasant Valley and Poughkeepsie	Sagliano	6	
District 4 - Town of Hyde Park	Black	7	
District 5 - Town of Poughkeepsie	Roman	8	
District 6 - Town of Poughkeepsie	Flesland		1
District 7 - Towns of Hyde Park and Poughkeepsie	Truitt	9	
District 8 - City and Town of Poughkeepsie	Brendli	10	
District 9 - City of Poughkeepsie	Rieser	11	
District 10 - City of Poughkeepsie	Jeter-Jackson	12	
District 11 - Towns of Rhinebeck and Clinton	Tyner	13	
District 12 - Town of East Fishkill	Metzger	14	
District 15 - Town of Wappinger	Incoronato	15	
District 16 - Town of Fishkill and City of Beacon	Forman	16	
District 18 - City of Beacon and Town of Fishkill	Landisi	17	
District 19 - Towns of North East, Stanford, Pine Plains, Milan	Pulver	18	
District 21 - Town of East Fishkill	Horton	19	
District 22 - Towns of Beekman and Union Vale	Coviello	20	
District 23 - Towns of Pawling, Beekman and East Fishkill	Thomes	21	
District 24 - Towns of Dover and Union Vale	Surman	22	
District 25 - Towns of Amenia, Washington, Pleasant Valley	Washburn	23	

Present: 24 Resolution: Total : 23 1
 Absent: 1 Motion: Yes No
 Vacant: 0 Abstentions: 0

2017180 A LOCAL LAW PROHIBITING THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE

Date: October 10, 2017