

New York State Department of Environmental Conservation

Deputy Commissioner & General Counsel

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Alexander B. Grannis
Commissioner

AUG 31 2009

Dear Deposit Initiator / Distributor:

This letter provides you with information regarding your responsibilities under the April 2009 amendments to the Returnable Container Act (commonly known as the "Bottle Bill").

As you may know, the implementation of these amendments was temporarily delayed by a federal court order, issued on May 29, 2009, in the case of *International Bottled Water Association, et al. v. Paterson, et al.* However, on August 13, 2009, the United States District Court lifted the prior injunction on most provisions of the amendments, so that New York State may implement and enforce major portions of the amendments. The only provisions that remain enjoined are the amendments impacting bottled water and the New York-specific UPC provisions in section 27-1012 (12) of the Environmental Conservation Law ("ECL"). The Department of Environmental Conservation ("DEC") is providing you with the following information to clarify some of your new obligations under the law and to assist you with compliance.

New York-Specific UPC

The Court's injunction of the New York-specific UPC provisions of the amendments (ECL § 27-1012 (12)) remains in full force and effect. Therefore, deposit initiators are not required to register container labels with DEC and beverage containers are not required to bear a New York-specific UPC at this time.

Handling Fees

The 2009 amendments increased the handling fees from 2 cents to 3.5 cents per container, effective June 1, 2009. Therefore, a handling fee of 3.5 cents must be paid on all containers accepted from dealers or redemption centers on and after June 1, 2009. All applicable refunds and handling fees must be promptly paid to each dealer or redemption center, in accordance with the regulations at 6 NYCRR §367.5 (c)(4).

To the extent that you have not paid the 3.5-cent handling fee on containers accepted since June 1, 2009, you must pay dealers and redemption centers the additional 1.5 cents per container on those containers. DEC realizes that it may be difficult to immediately issue payments to all dealers and redemption centers of these handling fees on previously accepted containers. You may make agreements with dealers and redemption centers specifying arrangements for payment of the additional 1.5-cent handling fee increase on previously accepted containers. Absent an agreement specifying alternative arrangements, you are responsible for making prompt payments of all handling fee amounts now due and owing, as specified in the regulations (6 NYCRR §367.5 (c)(4)). Failure to make such payments may result in DEC taking enforcement action.

Registration, Filing & Payment of Unclaimed Deposits

If you initiate deposits on beverage containers other than non-carbonated bottled water, you must also electronically register with the NYS Tax Department, file quarterly reports, and remit 80% of the unclaimed beverage container deposits to the state. For details on these obligations, please see the Tax Department's TSB-M-09(8)M, dated August 21, 2009. This TSB-M and other helpful information may be found on the Tax Department's website (www.nystax.gov).

Other Responsibilities

The April 2009 amendments include some other new provisions affecting deposit initiators and distributors, including:

- You must provide a sufficient number of bags, cartons, or other suitable containers to dealers or redemption centers, at no cost to them, for the packaging, handling and pick up of empty beverage containers that are not redeemed through a reverse vending machine.
- You may not require dealers or redemption centers to load their own bags, cartons, or containers into your vehicle, nor may you require that they provide the staff or equipment needed to do so.
- You may not require empty containers to be counted at a location other than the redemption center or dealer's place of business, and the dealer or redemption center has the right to be present at the count.

Deposit Initiators for Non-Carbonated Water

The injunction relating to beverage containers for water remains in effect until October 22, 2009, subject to further court proceedings scheduled for that day. However, the Court expects that the bottled water industry is "actively working to achieve compliance with all aspects of the Bottle Bill except the New York exclusive provisions." Therefore, on that date you should be prepared to comply with all applicable requirements under the law, including properly labeling water bottles, registering with the Tax Department, and placing deposits on water bottles in your refund value account.

For additional information regarding the Bottle Bill, please visit the DEC Bottle Bill website at: www.dec.ny.gov/chemical/8500.html. If you have questions regarding the Bottle Bill, you may send them to DEC's Bottle Bill email account at: NYBOTTLE@gw.dec.state.ny.us. You may also call DEC Staff at (518) 402-8705, or to speak with an attorney at DEC, please call (518) 402-9185.

Sincerely,



Alison H. Crocker
Deputy Commissioner
and General Counsel