



Nestlé Waters North America
New York Bottle Bill Lawsuit
Q&A
May 19, 2009

Q: Why is Nestlé Waters suing the State of New York?

A: In April 2009, the Governor of New York signed into law new deposit requirements on bottled water that were written in such a way that makes it unconstitutional, impossible to implement, and provides special treatment to some brands and varieties over others.

Nestlé Waters North America is a strong supporter of well-crafted deposit laws. We believe the best ones encourage recycling, do not hurt consumers, and do not favor special interests. The New York Bottle Bill fails all three tests.

We would prefer the State legislature fix specific provisions as the compliance deadline is fast approaching, and we want to be able to provide bottled water to our customers.

Beyond that, a solid foundation is needed to build a lasting and effective recycling program in New York State.

Q: Why do you oppose the bottle bill?

A: We support effective and environmentally sound bottle laws that make beverage producers take responsibility for recycling their containers. We strongly support both consumer recycling incentives and convenience as key elements of that program.

But this particular bill is written in such a way that it will be unnecessarily expensive for consumers, undermine comprehensive recycling efforts and promote sugar-filled drinks over water.

If fairly applied, we strongly support providing consumers with a nickel 'refund value' on our beverage containers to stimulate greater recycling. But this bill contains an additional hidden and unnecessary fee of 3 ½ cents per container which the consumer will never get back.

This 'handling fee' is used to support the bloated and outdated beer and soft drink collection system. Why this system is 3 to 4 times more expensive than similar systems in other states is something of a mystery, but part of the reason is that it operates outside of both the market-driven scrap recycling system and the comprehensive curbside system.



We've seen first hand that in market-driven, comprehensive recycling systems, beverage containers can be recycled at levels approaching 75 percent and at a cost of less than one cent per container. And rather than depriving curbside and other collection systems of revenue, this comprehensive approach provides them with revenue.

Inexplicably, this bill discourages consumers from choosing a healthy option and instead promotes drinks that contribute to obesity. For no rational reason, the bill carves out an arbitrary exception for drinks with added sugar making healthier alternatives more expensive.

Q: Is there a model for a bottle bill that you would consider “effective and environmentally sound?”

A: California's container recycling law is a great example of a bottle law that promotes a better, cleaner solution and comprehensive recycling. It is the most comprehensive in the country, covering virtually all beverages, and providing consumers with a 5 and 10 cent recycling incentive. As a result, California recently reported a 74 percent recycling rate.

Unlike New York and other states with traditional deposit laws, California's law complements rather than competes with curbside and other collection programs. And the California system costs consumers less—less than one cent per container.

We do not support taxing recycling systems to support state government budget shortfalls, but it's worth noting that California's recycling system has been able to 'loan' that state's general fund more than \$450 million.

Like California, New York can and should modernize and expand the bottle bill to operate a fair and comprehensive recycling system that is convenient to consumers, cost effective and doesn't rob the municipalities of critical revenue to maintain curbside recycling.

It has never made sense to us to have a bottle bill that operates as if our municipal recycling system doesn't exist. A modernized bottle bill means more recycling for water and soda bottles, and more curbside recycling means more ability to capture the plastic bottles—from shampoo to ketchup and detergent—that aren't covered directly by a bottle bill.

Q: Do you support applying the deposit law to bottled water?

A: Yes, and we think it should apply to all bottles, including ones that contain sugar-filled beverages. It just doesn't make sense that the state would exclude store brand bottled water and drinks with added sugar. They use the same recyclable plastic that is



used for our bottles. We want a law that promotes recycling, applies to everyone equally, and promotes healthy consumer choices.

Q: How does this bill hurt recycling programs?

A: This bill will choke local recycling budgets by taking bottles out of curbside collection. Bottled water is currently the most recycled item in curbside recycling, so it would remove municipalities' greatest source of revenue. Moreover, unlike other bottle bills that return funds to community recycling programs to support curbside, the funds generated by this law will be earmarked for unrelated items.

Without an ability to sustain themselves financially – particularly during these tough economic times – this legislation may encourage many communities, large and small, to end their recycling programs because they become too expensive.

Also, under the bill, retailers are only required to redeem the bottles they sell and this will restrict consumer access to recycling. This bill will hit recycling efforts in businesses, public places, and schools particularly hard by discouraging mass collection of plastic bottles.

We need a modernized bottle bill that can complement – not compete with – recycling programs that capture these other household goods.

Q: Why do you argue that this bill is unfriendly to the environment?

A: This legislation will hurt overall recycling efforts by diverting material and critical revenue from community-based curbside collection to a more expensive collection system. Community based recycling programs will not receive the revenue from the deposits. Instead, those funds will be funneled by Albany directly to more general purpose budgets. As water bottles disappear from curbside bins as a result, these municipalities would have no way to make up for the lost revenue.

As this revenue decreases, small communities' environmental efforts will take the hit. In these tough economic times, this legislation may encourage many communities, large and small, to end their recycling programs because they become too expensive.

Other bottle bills, like the comprehensive program in California, help to fund recycling and environmental programs. New York's bill would only send money to the state's general funds where it can be spent on anything.

Q: What is the legal basis for the challenge to New York's law?

A: Our primary concerns are based on the harm the bill would do to consumers and recycling programs, but the bill also violates the Constitution while imposing an



unreasonable deadline for compliance and arbitrarily excluding non-carbonated sugar-filled beverages.

Prohibiting the sale of New York-labeled bottled water outside the state also clearly violates the Commerce Clause of the Constitution which gives Congress the sole power to regulate interstate commerce.

Specifically, we need a reasonable amount of time in order to comply with all the new requirements. The law provides less than 60 days to design new product labels, register and get approval for those labels from the Department of Health and the Department of Environmental Conservation, implement a distribution system that ensures New York-labeled bottles are offered for sale only in New York, establish a new accounting system, bank accounts and financial arrangements, and create a process to pick up and pay for empty bottles from retailers, redemptions centers and other businesses that have been redeemed by consumers. This is simply unreasonable.

Finally, the bill inexplicably excludes all non carbonated beverages with sugar. In addition to penalizing healthy choices, it does not treat all bottled products equitably.