

## Judge OKs nickel deposit on bottled water

By John Purcell

Advocates of the expanded bottle deposit law won a victory on Oct. 23 when U.S. District Judge Deborah Batts removed an injunction on including bottled water. Starting this Sunday, all bottled water under a gallon will be subject to a refundable, 5-cent deposit.

It marks the end of a lengthy lobbying campaign by environmentalists to update the state bottle deposit law first enacted in 1982, which included only containers of carbonated beverages.

When the injunction was lifted, the start-up date was originally set for October 31, but The Food Industry Alliance of New York state pushed to postpone implementation until Nov. 9 to allow time for retailers to reprogram bottle deposit machines, known as reverse vending machines, to begin accepting the containers with a new UPC code.

"[Food stores] got to have the product in their stores, and we just need to make changes with our cash registers and reverse vending machines," said Michael Rosen, senior vice president for the Food Industry Alliance of New York state. "Our members are going to work hard to make it work, and we believe they are going to make it work."

Gov. David A. Paterson is satisfied the expanded bottle law will be going into effect soon.

"I am pleased that the U.S. District Court for the Southern District of New York has ruled to lift the injunction involving nickel deposits on bottled water," Paterson said in a prepared statement. "The expansion of the legislation not only provides our state with much needed revenue, but will also help us to keep our neighborhoods and parks clean."

The first major expansion of New York state's bottle bill has also pleased environmental and government watchdog organization, the New York Public Interest Research Group.

"We should see very immediate benefits," said Joseph Stelling, campaign organizer of NYPIRG for the bigger better bottle bill. "We should see a noticeable reduction in litter."

Bottled water currently accounts for a quarter of the total beverage market in the state, said Stelling. The Container Recycling Institute estimated that the five-cent deposit will raise bottled water recycling from 14 percent to 77 percent.

"We should see a huge boost in the recycling rate of bottled water," said Stelling.

Environmental advocacy groups similarly supported the expanded bottle bill.

"Now more than ever, an expansion of the bottle bill is the right thing to do," said Land Trust Alliance New York Conservation Manager Ethan Winter in a prepared statement. "It will reduce municipal costs, generate revenue for the state, save taxpayers money, reduce greenhouse gas emissions, and reduce litter in the parks, beaches, and special places New Yorkers love."

Adirondack Council Executive Director Brian L. Houseal also praised the bill for how it will benefit farmers and their livestock.

"It will help to prevent injury to dairy cows and other farm animals in the park's 22 agricultural districts," said Houseal. "Discarded plastic bottles too easily go unnoticed when farmers cut bale hay and other animals feed, leading the cows and horses to accidentally swallow them along with the feed."

Advocates originally wanted an updated bottle law to include a nickel deposit on sports drinks, energy drinks, iced teas and juice bottles, but in the end, only bottled water was added to the legislation.

"Ultimately, I think it came down to a compromise in the legislative process," said Stelling.

The compromise was one NYPIRG could accept, said Stelling, because it captured the biggest source of non-deposit bottled containers.

Nestle Waters North America, the International Bottled Water Association and Polar Beverages Corporation filed a lawsuit against New York state public officials in May that claimed provisions in the expanded bottle law were unconstitutional. One of their arguments was that it was unfair for bottled water to be treated differently than water with sugar added.

"Let's finish the job and expand the law to teas and sports drinks, and allow for universal redemption of these containers," said Kim Jeffery, CEO of Nestlé Waters in a prepared statement. "It's right for the environment and it's right for New York."

After the final ruling, U.S. District Court Judge Deborah A. Batts approved a provision that 80 percent of revenue from unclaimed deposits will go to the state. Previously, all unclaimed deposits went to distributors. Another key provision settled in court last August raised the handling fee from 2 cents to 3.5 cents per bottle for stores and redemption centers taking returns.

Steve Harris, president of the New York state Beer Wholesalers Association, said the updated bottle bill has always been designed as an environmental bill. The bill is "horrible" for business, according to Harris.

Increasing the handling fee will dramatically impact the cost of products for consumers, said Harris, and the state getting 80 percent of unclaimed deposits has the potential to put some bottled beverage companies out of business.

Stelling said industry claims that prices of products are going to "skyrocket" because of the bill is exaggerated. He even said companies may use the bill as an excuse to raise product prices.

While the handling fee could be a welcome addition for businesses that return deposit containers, it might not help out smaller stores.

"We are pleased that the handling fee is increasing, but even at 3.5 cents for a container it does not cover the cost of manually redeeming the containers," said Jim Calvin, president of the New York Association of Convenience Stores.

Calvin said the process for smaller stores can be labor intensive since they can't fit redemption machines on location. Clerks have to examine the bottles to see if they are redeemable, then rinse them out if necessary, sort the containers and drive them to a redemption location.

Space at smaller stores is another concern Calvin raised, because he said there is barely enough room currently in some stores even without bottled water redemption taking place.

"For many years now we have been trying to explain to the state the limitations we have in a smaller retail environment," said Calvin.