



New York Association of Convenience Stores
130 Washington Avenue, Suite 300, Albany NY 12210

TELEPHONE: (800) 33-NYACS or (518) 432-1400

FAX: (518) 432-7400

NYACS Water Deposit Q & A for Retailers

November 5, 2009

Q: What is the penalty for not collecting or not redeeming the nickel deposit on deposit beverage containers?

A: \$500 a day.

Q: Who enforces the Bottle Bill?

A: Until now, only the state Department of Environmental Conservation enforced it. But now, DEC, the state Attorney General, state Department of Agriculture and Markets, and any county, city or village may enforce it as well. So there will be more eyes watching, and more places to file complaints.

Q: If I have bottled water in my store without the 5-cent deposit label, can I continue to sell it?

A: Only through Saturday, November 7. As of 12:01 a.m. this Sunday, November 8, all water offered for sale in New York must be Bottle Bill compliant.

Q: What if I still have some non-deposit water left over?

A: Ask your supplier if they will take it back and give you a credit. If they refuse, consider donating it to your regional food bank or another community organization, or offering it to your employees at no charge.

Q: How often does the deposit initiator or distributor have to pick up my empty water bottles?

A: Under state regulation, at least as frequently as the filled product is delivered. If you get a delivery weekly, they must pick up at least once a week (*see New York Codes Rules and Regulations, Title 6, Part 367, Returnable Beverage Containers*).

Q: My wholesale distributor says they're going to deliver certain brands of water, but that a different company is going to be picking up my empties. Is that allowed?

A: Yes. In that instance, the bottler is the deposit initiator, and has hired your wholesale distributor as their agent for delivery and a third party pick-up firm as their agent for collecting the empties. That's fine, as long as the third party adheres to the pick-up frequency above and the other requirements set forth in the law.

Q: What if they say they're not going to pick up my empties that often?

A: That's unacceptable. Step One is to remind them of their obligation under state regulation. If that doesn't work, Step Two is to speak directly with the bottler, because as the deposit initiator,

pick-up remains *their* responsibility under the law. If unsuccessful, Step Three is to call the state DEC, Ag & Markets, or your county government and ask them to intervene. The last resort is to stop carrying the product until you get a signed agreement committing to a pick-up schedule that conforms to state regulations.

Q: I'm being told that the third party pickup agent is going to receive a portion of my handling fee. How does that work?

A: In almost all cases, the third party is working for the deposit initiator, and it is the deposit initiator's responsibility under the law to pick up the containers at *their* cost, not yours. Do not let anyone take a portion of your handling fee without your prior approval. In some instances, it may be worth it to a retailer to split the handling fee if the pick-up agent agrees to allow co-mingling of product, reducing your sorting and handling costs. That's your choice, no one else's.

Q: My beer distributor is telling me I have to sort the empty beer bottles by brand, putting them back in their original cases. Can they make me do that?

A: Yes. Under the law, a distributor can indeed require retailers to sort containers according to brand. Your cost of doing this type of sorting and handling is what the 3 ½-cent handling fee is intended to offset. However, distributors are free to work out mutual agreements with retailers outlining alternate sorting arrangements.

Q: Can they require a minimum quantity for pickup?

A: No. They have to pick up at least as often as you get a delivery of that product, and they have to pick up whatever you have. While a deposit initiator or distributor can require you to sort containers according to brand, nothing in the law or regulations allows them to refuse to pick up less than a full case of a particular brand or product.

Q: What other rights do I have as a retailer concerning pick-up of empties?

A: Either the deposit initiator or distributor has to provide stores with a sufficient number of bags, cartons, or other suitable containers, at no cost, for the packaging, handling and pickup of empty containers that are not redeemed through a reverse vending machine. When picking up, they may not require you to load the empties onto their trucks, nor to provide staff or equipment needed to do so. They may not require empty containers to be counted anywhere other than your place of business, and you have the right to be present at the count.

Q: Some of the water we're getting has the "NY 5¢" marking etched right into the bottle rather than on the product label. Is that allowed?

A: Yes, just as it is with cans.

Q: Some of the water product we're getting has a "NY 5¢" sticker on the outside of the bottle, separate from the product label. Can I sell that? Collect the deposit on it? Redeem the deposit on it?

A: Yes. New York State regulations allow for the "stickering" for imported waters such as Fiji as well as private-label water on an interim basis until

Q: As of November 8, will people be able to bring back water bottles without the "NY 5¢" label for redemption?

A: They're not supposed to. If you redeem bottles manually, your store manager/clerk will need to examine each water bottle presented for redemption to verify that it has the deposit marking. If you have a reverse vending machine, it may not be able to distinguish between the UPC code of

a deposit bottle versus a non-deposit bottle, so for awhile, some non-deposit containers may find their way through the redemption stream.

Q: I understand the deposit on water applies to containers of less than one gallon or 3.75 liters. I heard the state of Connecticut exempted the 3-liter jug of a particular water brand from their bottle bill. Is New York letting us sell that without deposit too?

A: No. That size container remains subject to deposit in New York.

Q: What if I have further questions about the Bottle Bill?

A: Contact Jim Calvin at NYACS by calling 800-336-9227 or emailing jim@nyacs.org, or email the state DEC at nybottle@gw.dec.state.ny.us.