***News from Attorney General Eric T. Schneiderman***

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**A.G. SCHNEIDERMAN, GOVERNOR CUOMO ANNOUNCE LARGEST-EVER PENALTY AGAINST BEVERAGE DISTRIBUTOR FOR VIOLATING NEW YORK’S BOTTLE BILL LAW**

North Bergen Beverage To Pay $500,000 for Allegedly Breaking The Law By Persistently, Repeatedly, And Knowingly Selling Regulated Beverages In NY For Which Deposits Were Not Collected

*Company Must Pay State Additional $50,000 For State’s Investigation Costs, Suspend Sales in NY of All Products Covered by Bottle Bill for 3 Years*

NEW YORK – Attorney General Eric T. Schneiderman and Governor Andrew Cuomo today announced the largest-ever penalty obtained for alleged violations of New York’s Returnable Container Act, otherwise known as the Bottle Bill.

[The court-ordered settlement](http://links.govdelivery.com/track?type=click&enid=ZWFzPTEmbXNpZD0mYXVpZD0mbWFpbGluZ2lkPTIwMTgwMTE5Ljg0MDAzMTMxJm1lc3NhZ2VpZD1NREItUFJELUJVTC0yMDE4MDExOS44NDAwMzEzMSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE2OTc5MzYzJmVtYWlsaWQ9YW5kcmV3LmdlcnNob25AYWcubnkuZ292JnVzZXJpZD1hbmRyZXcuZ2Vyc2hvbkBhZy5ueS5nb3YmdGFyZ2V0aWQ9JmZsPSZleHRyYT1NdWx0aXZhcmlhdGVJZD0mJiY=&&&100&&&https://ag.ny.gov/sites/default/files/north_bergen_beverage_consent_judgment_signed.pdf), which was ordered by the New York County Supreme Court, requires New Jersey-based North Bergen Beverage to pay the state a total of $550,000 in penalties and costs – including $400,000 in new penalties on top of a previous payment of $100,000, as well as $50,000 for the cost of the State’s investigate of this matter. The $500,000 in total penalties being paid by North Bergen Beverage is more than three times greater than the previous largest-ever penalty paid by a beverage distributor for alleged violations of New York’s Bottle Bill.

North Bergen Beverage is also required to suspend its sales in New York of all beverages covered by the Bottle Bill for three years. In addition, if the company violates the court-ordered settlement by selling any regulated beverage during the three-year no-sale period, it would be required to pay the state an additional penalty of $400,000. Pursuant to the Bottle Bill, the penalties paid by North Bergen Beverage will be directed to New York’s Environmental Protection Fund, a source of funding for capital projects that protect the environment and enhance communities.

“New York’s Bottle Bill is a hallmark environmental law – reducing litter, promoting recycling, and generating millions of dollars that benefit New Yorkers’ health and environment each year,” **Attorney General Schneiderman** said. “As we allege, North Bergen Beverage persistently, repeatedly, and knowingly broke the law. This largest-ever penalty and three-year suspension sends a clear message to all beverage distributors:  if you do business in New York and break the Bottle Bill law, my office will hold you accountable.”

“Companies have a legal and ethical responsibility to comply with the state’s environmental laws,” **Governor Cuomo** said. “This case serves as a strong reminder that New York will continue its strong record of environmental protection and enforce the laws against any deceptive practice that takes advantage of consumers and puts the environment at risk.”

**DEC Commissioner Basil Seggos** said, “Unclaimed bottle deposits support important environmental programs that protect the State’s environment, reduce waste disposed in landfills, and save energy. Companies operating in New York have a responsibility to comply with the state’s environmental laws, and I commend DEC investigators and our partners in the Attorney General’s Office for taking decisive action in the North Bergen beverage case.”

Investigations by the Attorney General’s office and the New York State Department of Environmental Conservation (DEC) Environmental Conservation Police Officers revealed that, between 2013 and 2016, North Bergen Beverage sold millions of containers of regulated beverages in New York, for which the required deposit was not collected and placed into a dedicated account, as is required for all regulated beverages intended for sale in the state. The Bottle Bill requires that a portion of deposits placed in that account and not redeemed be remitted to the state. By flooding the New York market with these beverages, North Bergen Beverage allegedly undermined the law, gained an unfair price advantage over competitors playing by the rules, and denied the state revenue.

New York’s Bottle Bill, which regulates carbonated soft drinks, water, beer, other malt beverages, and wine coolers sold in containers of less than one gallon in size, has been one of the state’s most effective recycling and litter prevention programs. According to the DEC, the law has reduced roadside container litter by 70 percent. In 2016, the law helped to recycle 5.1 billion plastic, glass, and aluminum beverage containers totaling more than 336,000 tons; at no cost to local governments. Additionally, the DEC estimates that the program eliminates 200,000 metric tons of greenhouse gases annually.

The Bottle Bill requires that beverage containers covered by the law carry a label indicating a New York deposit of at least 5-cents, and that a deposit be collected on every one of these beverage containers sold in the state. The entity that first sells or offers the beverage for sale in the state, and collects the first deposit, is the “deposit initiator.” Distributors, such as North Bergen Beverage, who typically buy from deposit initiators and then resell them to retailers – as well as retailers who sell directly to consumers – must also charge a deposit for each container sold. Once the beverage is consumed and the container is returned to a retailer or redemption center, the process is reversed so that each party who paid a deposit in the process is refunded their deposit.

The deposit initiator must register with the New York State Department of Taxation and Finance before selling in the state, and also maintain a refund account into which the deposits collected on the first sale of the beverage in New York are placed. When returned containers reach the beverage initiator, funds are taken out of the account to refund deposits. Since not all containers first sold or offered for sale are returned to the deposit initiators, on a quarterly basis, they must remit to the state 80 percent of the unclaimed deposits held in the refund account.

Based on the investigation conducted by the Attorney General’s office and DEC, in October 2016, [Attorney General Schneiderman filed a lawsuit in New York County Supreme Court against North Bergen Beverage](http://links.govdelivery.com/track?type=click&enid=ZWFzPTEmbXNpZD0mYXVpZD0mbWFpbGluZ2lkPTIwMTgwMTE5Ljg0MDAzMTMxJm1lc3NhZ2VpZD1NREItUFJELUJVTC0yMDE4MDExOS44NDAwMzEzMSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE2OTc5MzYzJmVtYWlsaWQ9YW5kcmV3LmdlcnNob25AYWcubnkuZ292JnVzZXJpZD1hbmRyZXcuZ2Vyc2hvbkBhZy5ueS5nb3YmdGFyZ2V0aWQ9JmZsPSZleHRyYT1NdWx0aXZhcmlhdGVJZD0mJiY=&&&101&&&https://ag.ny.gov/press-release/ag-schneiderman-files-lawsuit-against-large-beverage-distributor-alleging-persistent) – doing business under several names, including Fly Fly and Beverage Plus, and its principal, Steven Arillo. The suit alleged that the company sold beverages in New York for which a deposit had not been initiated, in violation of the law. The state additionally alleged that North Bergen Beverage sold beverages for which a deposit had been initiated in New York without collecting the required deposit.

The state believes that through these alleged illegal activities, North Bergen Beverage created an unfair price advantage for its products over its competitors in New York. Further, by flooding its New York market with beverage containers for which a deposit was never initiated, North Bergen Beverage caused the refund accounts of registered deposit initiators to be reduced when the “non-initiated” containers the company sold into New York were redeemed. Since deposit initiators are required to remit 80 percent of all unclaimed deposits to the State of New York, the lawsuit charges that the reductions in refund accounts caused by North Bergen Beverage’s allegedly illegal activities resulted in the State being deprived of revenue.

Beer, soda, and other beverages covered by the Bottle Bill typically bear a multi-state deposit stamp that includes New York, and also other deposit states such as Connecticut, Massachusetts, and Iowa. The multi-state deposit stamp does not necessarily mean that the beverage has been initiated with a deposit in New York, particularly when sold outside New York. The State’s investigation confirmed that large volume beverage sellers in non-deposit New Jersey, which do sell beverages with the multi-state stamp, typically do not stock and sell New York-initiated beverages – and therefore do not charge deposits.

In 2014, Attorney General Schneiderman obtained a $160,000 payment from another New Jersey-based company, FID Distributors, and an $80,000 payment from a Monroe County company, The Juice Factory Corp., both for failing to register as deposit initiators and opening refund deposit accounts, while repeatedly collecting deposits, thus evading the required payment of a portion of unclaimed deposits to the state. At the time, the payment that Attorney General Schneiderman obtained from FID Distributors was the largest payment made by a beverage distributors for alleged violations of the state’s Bottle Bill.

Attorney General Schneiderman thanks the DEC for its assistance.

This case is being handled by Senior Enforcement Counsel Andrew Gershon, Assistant Attorneys General John Turrettini and Mandy DeRoche, and Deputy Bureau Chief Monica Wagner of the Environmental Protection Bureau, with assistance from Department of Research and Analytics Data Intern Matthew Lehran. The Environmental Protection Bureau is led by Lemuel M. Srolovic and is part of the Division of Social Justice, which is led by Executive Deputy Attorney General for Social Justice Matthew Colangelo. DEC Senior Attorney Cristin Clarke, Deputy Counsel Scott Crisafulli, Major Scott Florence, Bureau of Environmental Crime Investigations Lieutenant Jesse Paluch and Investigator Sara Komonchak, and Environmental Conservation Officer Jeannette L. Bastedo assisted in this matter.