FRAME of REFERENCE

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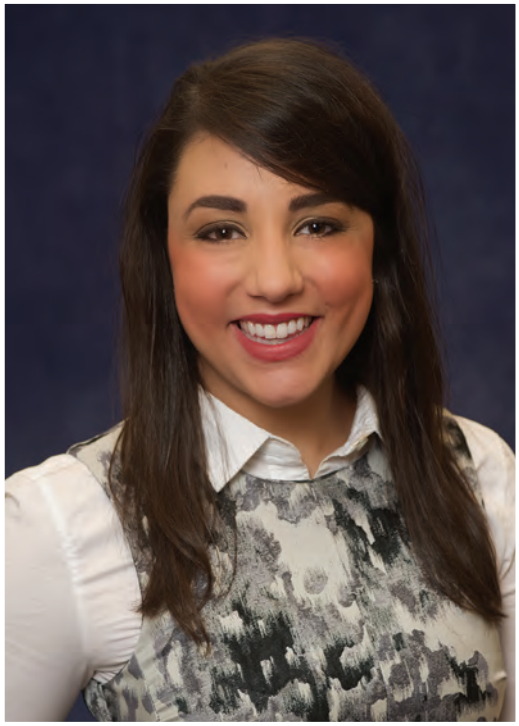

REDUCE. REUSE. RETHINK RECYCLING.

Understanding the Changing Recycling Market in New York

Municipal solid waste programs in the United States handle more refuse than any other country in the world, processing over 262 million tons of consumer waste daily.[1] To manage and mitigate solid waste disposal nearly every municipality in the U.S. has implemented a recycling program. Not only have these systems had a significant impact on both national and local economies by supporting over 757,000 jobs, providing $36.6 billion in wages, and contributing more than $6.7 billion to tax revenues nationwide,[2] recycling is universally considered an essential and indispensable component of waste reduction and environmental stewardship.

Despite the fundamental correlations between recycling and pollution reduction and resource conservation, the industry's positive impact on the labor economy has been steadily declining since the beginning of the 21st century. The EPA reports that the recycling market has lost 1.7 million jobs and $52.3 billion in wages since 2001.[3] In 2018, China, the primary purchaser of recyclable material produced in the U.S., dramatically reduced its importing of recyclable material, amplifying the downward effects of the economic shift. While most recyclable materials are processed and reused domestically, states like New York that do not have internal manufacturing markets have suffered tremendously because the recycling industry in these areas rely on exporting recyclable commodities.

New York's cities and villages are already reporting significant financial hardship related to processing recyclable materials. In some areas, haulers are choosing to disregard their municipal agreements and face the legal recourse resulting from the breach of contract rather than continue operating at financial loss. Other communities are finding that landfilling the

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material is less expensive than maintaining the existing recycling programs. Ultimately, addressing these market realities will require both long-term projects and immediate solutions pursued collectively by State and local officials. This article will discuss the status of recycling in New York State and the China Sword policy, identify legislative proposals aimed at combating the recent market changes and diverting product from the waste stream, and forecast how recycling might be managed by cities and villages in the future.

Financial Frustrations and the Impact of China Sword

General Municipal Law § 120-aa, requires all local governments to adopt a local law providing for source separation and the segregation of recyclable or reusable materials from solid waste. Until the most recent market destabilization caused by China, the collection of recyclables was a profit-making enterprise for many cities and villages in the State. Unlike trash collection, which involves tipping fees to offset the expense of operating and maintaining landfills, recyclables are processed by material recovery facilities (MRFs) that have historically sold the material on the open market and shared a percentage of the proceeds with the municipality from which the material was collected.

China Sword Policy

Since the 1980s, China has been the primary purchaser of the recycled material produced in New York, across the United States, and around the world.[4] In 2016, more than a quarter of all recyclable paper product in the United States was exported to China, and until recently, China imported more than half of the world's recyclable product for its manufacturing industry.[5] But, as noted above, the Chinese government announced in 2018 that it was modifying its recycling policy determinately and would cease importing all recyclable materials by 2020. Known as "National Sword," the policy caused seismic shifts in the international market for recyclable commodities.[6]

National Sword imposes strict limits on the levels of contamination that may be present on recyclable materials and bans certain paper and plastic mixes, which are two of the most common types of materials processed by municipal recycling systems.[7] The program complements China's current emphasis on developing its own recycling industry to manage the waste produced by its growing middle class. While China cites environmental and health concerns as its primary motivations for implementing the new policy, the country's economy benefits greatly from centralizing the industry and utilizing its own waste materials.[8]

The contamination targeted by National Sword includes both the organic material that remains on the products when they are deposited and the glass fragments that become imbedded in plastic and paper materials due to single-stream recycling. Unfortunately, the materials most susceptible to contamination (i.e., paper and plastics) are among the most prevalent in the municipal supply, and virtually all opportunities for receiving a reasonable return for these products have been eliminated. In 2018, only 35% of recyclables nationwide remained profitable according to Waste Management, as compared to 64% in 2017.[9] As a result, the material is kept stored and unused in many communities because it is too contaminated to meet China's requirements and no other international markets are capable of absorbing the previous demand.

Statewide Impact

Where materials are being processed to remove contamination to acceptable levels, MRFs are facing inflated handling costs because of the slower treatment and increased labor required to address the impurities. These expenses are exacerbated by lower revenues and the inability to sell the product in other markets. Additionally, MRFs face regulations imposed by the Department of Environmental Conservation (DEC) that restrict how the product is treated, stored, and managed.[10] Stockpiling can also deteriorate the quality of the material which further depreciates the MRFs' profits.

Another problem for many cities and villages is balancing the policy-driven supply of recyclable materials with the market-driven demand. Due in part to the prodigious efforts of municipal and State public awareness campaigns and the implementation of single-stream collection, recycling has become an integral part of the State's and local governments' shared environmental agenda, with most households participating in recycling programs. However, because recycling has become so ingrained in New Yorkers' lives, many participate in "wishful recycling." This is an attempt by well-intentioned residents to recycle materials that are either not processed by the local MRF, or not recyclable at all. Wishful recycling overloads the stream and contributes

to contamination, making the processing of the materials more challenging and markedly less efficient.

Albany Action Plan: Divert Products Away from the Waste Stream

Local officials may struggle to provide residents with recycling service if the collection and processing of materials remain cost prohibitive. Returning to dual stream collection has the advantage of minimizing glass contamination, but reverting to this system is unfeasible with current recycling methodologies. Nearly every processing facility in New York State operates under single stream technology and changing the system would require a complete overhaul of equipment, trucks, and education, which is extremely costly and time consuming. While the Legislature may not have had municipal recycling and local waste collection systems in mind when negotiating the 2019-2020 State Budget, several measures have the effect of diverting products away from the entire waste stream. Reducing the overall volume of product in the waste stream also benefits recycling programs and may contribute to reduced curbside collection costs.

Proposed Expansion of Bottle Bill

In an effort to extract glass from the recycling stream, the 2019-2020 Executive Budget proposed to expand Environmental Conservation Law § 27-1003, also known as the Bottle Bill or Returnable Container Act.[11] The Bottle Bill was first implemented in 1983 and requires a 5¢ deposit on many beverages.[12] The purpose of the deposit is to incentivize consumers to return the containers in order to refund their deposits. Processing the containers at redemption centers considerably reduces the environmental impact of littered bottles and results in fewer products being collected as part of curbside recycling programs. Since its inception, approximately 75% of beverages sold in New York have been redeemed, totaling approximately 11.2 million tons of containers.[13] Additionally, bottle redemption diminishes the amount of material collected curbside and correlates to reduced local recycling costs.

Although the bottle deposit expansion was ultimately left out of the State's Enacted Budget, increasing the scope of Bottle Bill would have removed valuable plastic product from the stream, some of which remains profitable for MRFs. A more targeted bottle deposit expansion that includes only glass containers would reduce contamination while increasing the profitability of both plastic and glass products by making the processing of these materials more efficient and effective. To further that objective, Assemblymember Englebright, Chair of the NYS Assembly's Environmental Conservation, is sponsoring legislation (A. 5028-A) that would expand the Bottle Bill to include wine, liquor, spirit, and cider containers, but preserves much of the existing program related to plastic.

Expanding the Bottle Bill to include wine and liquor bottles is advocated by many local governments, but including those containers in the State's bottle redemption requirements is not without its costs. Redemption centers would need to be reconfigured to accommodate the larger bottles captured by this alternative expansion and new regulations and procedures would affect manufacturers and purveyors of wine and spirits.

Bag Waste Reduction Program

While the Bottle Bill was not enacted as part of the 2019-2020 State Budget, the Legislature adopted a different waste diversion measure, the Bag Waste Reduction Law, which makes two major changes to single-use carryout bags in the State. First, the Law prohibits stores from distributing single-use carry-out plastic bags, and second, cities and counties are authorized to adopt a fee on single-use paper bags.

In addition, the Bag Waste Reduction Law specifically prohibits and preempts all local laws attempting to regulate single-use carry out bags by vesting the authority in all matters relating to plastic bags in the State. This provision eliminates the ability of cities and villages to impose more stringent regulations relating to single-use plastic bags. For instance, because produce bags and garment bags are specifically exempted from the prohibition, cities and villages may not adopt local laws that prohibit their use within their jurisdictions.

Regarding the paper bag fee, the Bag Waste Reduction Law authorizes only cities and counties to impose a 5¢ per paper bag fee after March 20, 2020. Fees imposed under this statute will not apply to customers using SNAP or WIC, and all sales within a jurisdiction imposing the fee must indicate the cost of the fee to the customer on the sales receipt. If a county adopts a paper bag fee, however, all fees imposed by the municipalities within that county and adopted prior to March 20, 2020, would be preempted one year after the county's fee becomes effective. Charging multiple fees is prohibited, however, a city may adopt its own fee in lieu of the one imposed by the county. The fee is treated as a tax and a portion of the fee collected is remitted to the counties or cities imposing the fees to be used solely for the purpose of buying and distributing reusable bags to the community.

Currently, no provision of the Bag Waste Reduction Law prohibits a village or a city from imposing a fee between now and March 2020. Theoretically, a local government may impose its own paper bag fee now which could remain effective indefinitely, because nothing requires the county to adopt such a fee. As a result, it is possible that such a local law may never be preempted by the county. Similarly, because the Bag Waste Reduction Law only effects paper bag fees imposed after March 20, 2020, current local laws adopted by cities or counties that impose a paper bag fee will remain effective in their present forms after the effective date of the statute.

Organics Diversion and Compost Programs

The 2019-2020 Enacted State Budget also established the Food Donation and Food Scraps Recycling Law, which requires sizable food production entities, like supermarkets, hotels, educational institutions, correctional facilities, and large food service business, called "food scraps generators," that produce an annual average of 2 tons or more per week of food scraps to engage in organics diversion by separating (1) excess edible food for donation, and (2) food scraps from other solid wastes to be sent to and processed by an organics recycler. The separation and diversion of food scraps is required for all non-exempt food scraps generators provided that an organics recycler is within 25 miles of the generator and has the capacity to accept all of the generator's food scraps.

Hospitals, nursing homes, adult care facilities, and elementary and secondary schools are explicitly exempted from the law. All other generators, including all colleges and universities, are subject to the law's requirements, but generators may request a waiver from the DEC based on undue hardship. While it may not be immediately apparent that this statute will involve local governments, cities and villages should expect an increase in the number of organics recyclers seeking to operate in the State. New facilities will be subject to the planning and zoning requirements that are effective within the municipality's jurisdiction, as well as those regulations imposed by the DEC.

The Future of Recycling in NYS

In New York, the reduction in sales of recyclable materials, the corresponding increase in the supply of recyclable product, and the lack of manufacturing opportunities to utilize the recyclable material has depressed profits and diminished most revenue generated by the sale of recyclable paper and plastic. The upending of the market has been especially challenging for those local governments that derived some revenue from the collection of recyclables. Although cities and villages are exceedingly resourceful in utilizing the little revenue they are able to generate, expenses like those presented through the recycling market crisis that are unavoidable and beyond municipal control dramatically deplete local budgets.

Cities and villages should be rewarded for creative problem solving that balances the public policy objective of recycling with current market conditions. Dedicated glass collection events coordinated by villages and cities collaboratively with MRFs and haulers may help limit the amount of glass that enters the recycling stream and provides a non-legislative alternative to reducing glass from curbside collection. These types of events may also better manage colored glass receptacles that are not easily processed during resource recovery. Funding for municipal composting programs will also help keep organic material out of the waste stream and improve the quality of what is collected at the curb. Additionally, villages and cities need financial assistance to make investments in recycling infrastructure. Like much of the capital infrastructure in New York State, the infrastructure to sort and process recyclable material is aging and outdated. Increasing the efficiency of sorting and processing will reduce current costs, while investments in advanced cleaning technologies will increase the products' prospective value.

The Chinese recyclables market is not likely to reemerge, and without any other international markets capable of supporting the world's existing supply of recyclable materials, nations, states, and localities must turn inward and employ innovative solutions to address the overabundance of recyclable commodities. Support for existing municipal recycling programs so that they are preserved as integral components to the State's environmental policy is as necessary as investing in alternative markets within the State. Finding the most efficient and cost effective solutions to the recycling challenges faced by the cities and villages in New York will persist long past this year's State Budget and Legislative session, but collaborative approaches that preserve local autonomy are critical to the success of future recycling programs.

For more information relating to recycling or the legislative proposals effecting environmental stewardship discussed here, please contact NYCOM Counsel Rebecca Ruscito at (518) 463-1185 or by email at rebecca@nycom.org.

Endnotes

1. Corinne Rico and Cooper Martin, Rethinking Recycling: How Cities Can Adapt to Evolving Markets, National League of Cities Sustainable Cities Institute (2018), available at https://www.nlc.org/sites/default/files/2018-09/CSAR_Recycling-MAC.pdf. See also, United States Environmental Protection Agency, Advancing Sustainable Materials Management: 2015 Tables and Figures: Assessing Trends in Material Generation, Recycling, Composting, Combustion with Energy Recovery and Landfilling in the United States (July 2018), available at https://www.epa.gov/sites/production/files/2018-07/documents/smm_2015_tables_and_figures_07252018_fnl_508_0.pdf.

2. United States Environmental Protection Agency, Advancing Sustainable Materials Management: Recycling Economic Information (REI) Report, (October 2016), available at https://www.epa.gov/smm/recycling-economic-information-rei-report#findings.

3. Id.

4. Rico, supra note 1, at 9-10.

5. Peter Spendlow and Julie Miller, Recycling Market Changes Cause Disruptions in Oregon, Local Focus, Sept. 2018 at 31.

6. Rico, supra note 1, at 9.

7. Id. at 4.

8. Id. at 5.

9. Typical Single Stream Composition, Waste Management in Rico, supra note 1, at 2.

10. See generally, Environmental Conservation Law Article 27. See also, Title 6, NYCRR § 360.

11. S.1508-B, Part F, Budget Article VII (Internal # 9 - 2019).

12. Container Recycling Institute, 35 Years of the New York State Bottle Bill (January 2019).

13. Id.

Editor's Note: the previous issue of this article incorrectly stated that the shot clock for small wireless facilities may be tolled if a local government notifies the applicant within 30 days of receiving the application. Rather, the local government must notify the applicant of an incomplete application within 10 days of receiving the application to pause the clock.