New Jersey Implements Mandatory Recycled Content Requirements for Containers and Packaging Products

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On January 18, 2022 Governor Phil Murphy signed P.L. 2021, c.391 (N.J.S.A. 13:1E-99.135-157) into law requiring "manufacturers" (as defined in the law) to meet minimum recycled content requirements for regulated plastic, glass and paper containers and packaging products sold or offered for sale in New Jersey beginning on January 18, 2024. The content requirements apply to containers or packaging products including paper and plastic carryout bags, plastic trash bags, glass containers, rigid plastic containers, and plastic beverage containers. The law also prohibits the sale of polystyrene loose fill packaging (packing peanuts). Companies must determine whether their products or containers and bags are regulated under the law and, if so, they must register as a manufacturer of a regulated product per the terms and timeframes established in the law.

The law requires companies that meet certain definitions to register with the Department of Environmental Protection (Department), through their specific online Registration Portal, and identify the products and goods that qualify as regulated products under the law. Once registered, manufacturers of regulated products will be required to report annually, beginning in July 2025, on their compliance with the specified post-consumer recycled content requirements for each category of regulated product.

Beginning in 2024, rigid plastic containers must include 10% post-consumer recycled content, plastic beverage containers 15%, glass containers 35%, paper carryout bags 40% or 20% depending on capacity, and plastic carryout bags 20%. These requirements increase periodically pursuant to the law. Additional information can be found in the Department's Recycled Content Law FAQ. There are, of course, certain exemptions and waivers for covered bags and containers under certain conditions. The law provides that exemptions and waivers are available for manufacturers that are unable to achieve compliance with applicable requirements.

The law includes a broad penalty provision that gives extraordinary discretion to the Department when "on the basis of available information, the commissioner finds that a person is in violation of this act …."

Specifically, the Department has the right to issue civil administrative orders demanding compliance, to bring a civil action in Superior Court for appropriate relief including the recovery of state costs for inspection, investigation and enforcement, as well as to levy administrative penalties of not less than $1,000 per day and not more than $25,000 per day for each violation.

Unfortunately, the Department has not yet promulgated regulations so there is a lack of clarity and many questions from the business community about the actual scope of the law, impact, exemptions, and process. As with most laws, the definitions and applicability can be interpreted, in many instances, differently depending on the specific facts relating to a

product or a company. For these reasons, our firm has consulted with an assortment of manufacturing clients, suppliers, retailers, and others to counsel them through these evolving and somewhat nebulous requirements. We communicate on a regular basis with the Department to clarify which products are or are not subject to the law.

Porzio's collaborative team of Real Estate, Land Use, and Environmental attorneys are actively monitoring the new law and will share relevant updates as the regulations evolve. Do not hesitate to contact us for any questions you may have related to the new law, its requirements and how to stay compliant.